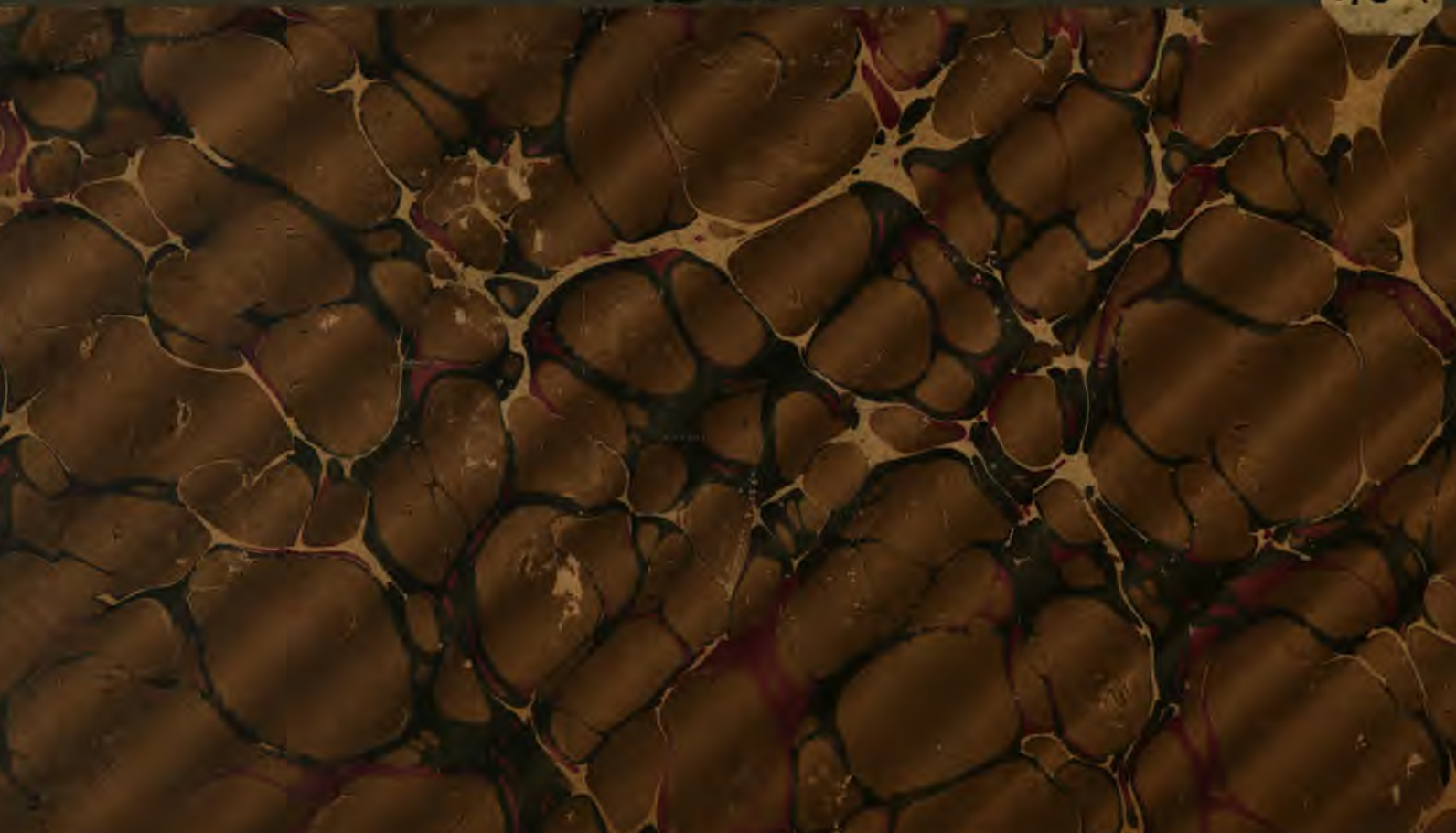

THE RIGHT OF THE STATE TO BE

AN ATTEMPT TO DETERMINE THE ULTIMATE HUMAN PREROGATIVE ON WHICH GOVERNMENT RESTS.

(DOCTOR'S THESIS.)

BY

F. M. TAYLOR, Ph. D., (U. of M.)

Professor of History and Politics in Albion College, Lecturer in Political Economy, University of Michigan, (1890-91.)

ANN ARBOR, MICHIGAN.
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INTRODUCTION.

"By what right does the State exist? By what right does any human organization coercively control the will of individuals? What is the ultimate basal prerogative on which government is built?" This problem has, until recent times, occupied a very conspicuous place in modern political philosophy. It has not, indeed, attracted great attention for its own sake purely. Attempts to solve it have been made chiefly as an indispensable preliminary to the solution of several closely related and thoroughly practical problems. "Which of two claimants for supreme authority, *e. g.*, the pope and the emperor, has the truly valid title?" "Is there any right to overthrow an existing but unsatisfactory political order? and, if so, who possesses that right?" "Has some particular class heretofore excluded from active participation in government a valid claim to be admitted to such participation?" It has been as an incident to the answering of questions like these that men have attempted to find the ultimate political prerogative, rather than as an effort to meet the direct anarchic demand for the *quo warranto* of the state. Thus, the doctrine of direct divine commission was given prominence by the medieval church as a necessary step in her struggle against emperors and kings for temporal ascendency. So, also, the doctrine that all political prerogative rests on an original compact, the violation of which justifies the pulling-down of kings, came to the front in a later epoch as one of the church's chief weapons against heretic rulers. Similarly, the efforts of new

classes of citizens to gain a share in government kept the question alive during the seventeenth and eighteenth centuries, and also determined the character of the generally accepted doctrine, securing that place for the contract theory.

This problem, which has thus been of chief interest because of its relation to other problems, has once and only once, brought out extended discussion for its own sake; once, and only once, has its solution been undertaken with direct reference to the defense of the state against anarchic tendencies. This was in the period immediately subsequent to the French Revolution, when the empirical excesses of those who controlled the practical application of Rousseau's theories, as well as the really anarchic character of the doctrine which makes all just government rest on the consent of the governed, rendered imperative an effort to rebuild the theory of the state on more secure foundations. In consequence, the next thirty years was extraordinarily prolific in theories as to the ethical genesis of the state, some of them new, most of them old, all of them reactionary, tending toward the exaltation of the state and the belittling of the individual.

But, while the problem here considered has in the past received ample attention either for its own sake or because of its bearing on related problems of supreme importance, in our own day the interest in the subject seems to have passed away. This fact, doubtless, has a variety of causes; but it is chiefly due to this,—that the practical occasions for insisting on a solution are fewer and less pressing than in former epochs. We have, indeed, more theoretical anarchism, a more explicit denial of the rightfulness of authority, than ever before. Still, this movement is too weak both in numbers and influence to threaten seriously the foundations of the state. Further, the

related problems which have hitherto called for a justification of the state as a part of the process of their solution, absorb much less attention in our day than formerly. Revolution, as a method of improving matters, has largely given place to reform. So, also, among the Western nations there are no longer any considerable conflicts between rival claimants for authority; and there is no general interest in the various efforts to extend political power to new classes of citizens. But, if the question no longer commands general attention, it has not yet lost its purely scientific interest. This could be true only if there were general concurrence in some particular solution. But such is far from being the case. On one thing, indeed, there is quite universal agreement. Almost everyone fitted to judge rejects the contract theory of the eighteenth century. But, beyond this, there is still chaos. The doctrine of divine right still has a large following. The theory that "might makes right" satisfies a large class. The right of self-preservation is accepted by many as the basal prerogative. Very common in America is the theory that the ultimate prerogative belongs to the people or the nation. And still others might be mentioned. It is evident, therefore, that the problem has still academic interest, for it is still unsettled. In this paper the task of finding the satisfactory solution is again undertaken. With what success the reader must judge.

In form, the essay divides into three parts. In the First, after a chapter of definitions, the reality of the problem will be maintained, and its exact nature defined. In Part Second, previous theories will be reviewed and their defects pointed out. In Part Third, the writer's own theory will be explained and defended.

PART I.

PREPARATION OF THE PROBLEM.

CHAPTER I.

PRELIMINARY DEFINITIONS.

1. THE PERSON.—The central conception with which all ethical, political, and social philosophy is concerned is *the person.* Every good which forms the particular end of any special human association, the larger good which forms the end of the state, the absolute good, with reference to which the total moral order of the world is determined,—all these have no significance save as the good of persons. To be a person, then, is, for one thing, to be a definite and permanent center of possible satisfactions. Especially is it to be a subject of one highest sort of satisfaction, viz., satisfaction in the contemplation of moral excellence in others and in the realization of moral excellence in one's self. Again, a person is a definite and permanent center of spontaneity, a fountain of absolute origination. Further, this fountain of spontaneity is free and rational, *i. e.*, is *self-determined and self-determined with reference to ideas*, mere mental conceptions of the possible consequences of action. Most significant of all, this definite and permanent center of spontaneity is capable of such rational self-determination with reference to one special kind of ideas, viz., *moral ideas*, and recognizes such ideas as addressing to itself an *indisputable imperative.* Of course all this is in definition of the concrete individual person. Other true person there is none. Combinations of persons may attain to a

kind of personality, a kind of will, reason, judgment, etc.; but such combinations offer only analogies to the true person. Each is only a "sort of person."

2. THE COMMUNITY.—But person is not a purely singular concept, it is a class name. There exist *persons*. These persons live in groups. Such a group we call a community. While in lesser groups such as the club, the literary association, the church, men seek to attain some single specific object as social pleasure, or literary culture, or religious good; in the community they simply *live*. The word community, therefore is properly used to designate the general class to which the family, the village, the tribe, the people (German *Nation*) belong. Communities may be largely accidental in their nature, or mainly artificial; or, as most usual, *historical*, *i. e.*, having a common past, and, so, usually community of origin, language, literature, social and moral ideas, etc.

3. SOCIETY.—The general totality of relations embodied in any community is the conception which in this essay will be designated by the word society. In this sense society is the abstract correlate of community, *i.e.*, the abstraction which is actualized or incarnated in a community. Society in this general sense is not a free product. It comes into being with the mere juxtaposition of men in time and space. Let two men, who speak different languages and come from opposite quarters of the globe, meet on an otherwise uninhabited island, and at once society comes into existence; for at once necessary relations, necessary rights and obligations, necessary duties, etc., come into existence.

4. RIGHTS.—The simplest reflection on the fact of men living in communities, makes it evident that there is no possibility of realizing personal freedom, and the destiny which is

conditioned by this freedom, except through the recognition by persons in general of the possession by each of valid claims to have regulated with reference to himself the conduct of other persons. The necessity of such recognition grows out of the fact that only so is it made "possible for a man to be freely determined by the idea of a possible satisfaction to himself, instead of being driven this way and that by external forces," and so made possible to "give reality to the capacity called will." (Green Phil. Works, Vol. II., p. 338.) Such a claim belonging to one person, to have regulated with reference to himself, the conduct of other persons in some one or more particulars is a right.

Throughout this paper the word right, when used without any qualifying term, means simply a moral right, *i. e.*, a right which needs neither formal nor informal recognition by men to give it rational validity. These rights are claims of the individual upon his fellows which *ought* to be enforced, even if they are not. If I propose to call special attention to the antithesis of such rights to those rights which have the sanction of the state, I shall call them *natural* rights, signifying that they derive their validity not from human enactment but from the very nature of men and circumstances.

In defining a right as a valid claim inhering in one person to have regulated with reference to himself the conduct of other persons in general, we already imply the existence of a correlative *obligation.* The obligation is the moral (or legal) imperative resting on the "other persons in general," thus to regulate their conduct with reference to the person in whom the right inheres.

5. PREROGATIVES.—Closely allied to the right, even in some aspects merely a particular sort of right, is the concept

prerogative. A prerogative is a valid claim belonging to one person to be the agent who regulates the conduct of other persons. It is, therefore, distinguished from a right in that the latter is merely a claim to have the conduct of other persons regulated in the given case. These two may be further distinguished as to their ends. A right is a claim, having self as its object; since it is a valid claim belonging to one person to have the conduct of other persons regulated with reference to the interest of the first person. Rights, strictly speaking, must be personal, private. Of prerogatives, on the other hand, this may or may not be true. Some prerogatives have self as their end, *e. g.*, the right of redress. Others aim to secure the good of the person on whom the authority is exercised, *e. g.*, the parental prerogative. Others still have as their end a general, social good. Prerogatives, therefore, need to be distinguished as to their nature. We would divide them into at least two classes; viz., the Private, Personal, or Egoistic Prerogatives and the General, or Altruistic Prerogatives,

To every perfect prerogative, as to every perfect right, there is, abstractly considered, an exactly corresponding obligation. If one possesses a valid claim to regulate the conduct of other persons, those other persons are in duty bound to submit to such regulation, and persons in general are bound not to interfere.

In this essay the word prerogative, like the word right, when standing without an attributive, will mean a rational, or moral, or natural prerogative. Further, in accord with common usage, right will frequently be used as its synonym. Thus it will sometimes be better to say "the parent has a right to control his children," than "the parent has a prerogative to control his children," though the latter would be more strictly accurate.

There seems to be a disposition in some quarters to object to both right and duty in such cases as the last, to declare that the exercise of parental control should be called, not a right, but a duty. Some even go so far as to argue that we ought to eliminate the word right from the moral realm, and substitute the word duty. As a mere practical suggestion, *i. e.*, as a means of making men less selfish, more altruistic, more disposed to live in accord with the precepts of Christianity, this suggestion may have value. But it will not answer for philosophy, since philosophy can never afford to relinquish a term when this stands for a really existent idea. As a matter of fact the conceptions of a duty and a right are clearly distinguishable, though never separable. If one has a duty, *i. e.*, is morally bound to pursue a certain course, he must on that very account have a right to pursue that course; that is, he must have a claim on a moral universe not to hinder him in the performance of that duty: for only on that condition is such performance possible. To say that it is the duty of the parent to control his children, is therefore, to say that he has *a right, a prerogative*, to control his children.

6. THE ABSOLUTE JURAL ORDER. *Jus Naturæ.* — In this discussion we have already had frequent occasion to allude, by implication at least, to a system or order of right which embraces and harmonizes all particular rights. That order we must now consider. And we remark in the first place, that this order is called absolute, not as being relative to nothing, but as *not being relative to the opinion or will of any thinking subject.* It is "the absolute order supposed to be independent of the human will" which "has, ever since the earliest days of philosophizing, been denominated the law of nature" (Pulszky, Theory of Law and Civil Society, p. 78). It is that

system of principles which, taking into account everyone of the numberless facts that condition a given epoch, ought to be enforced, though it never is. It is therefore a right which can be known perfectly only to an absolute intelligence. It is of course a pure abstraction, yet none the less real and of supreme importance. It is metaphysically, as well as to the thought of men in general, the immediate basis of all positive *jus*. Positive *jus* as expressed in the enactments of the state has real, *i. e.*, moral, rational validity, because, and in so far as, it embodies the absolute *jus*.

There has developed in our day a very general disposition to deny the existence of the absolute jural order, the *jus naturæ*. In this direction one might multiply citations to an indefinite extent. Here are two or three. "There is no other law than positive." (Stahl, *Philosophie des Rechts*, Vol. II, Part I. p. 221). "If natural law is not *positive*, then it is not law." (Bluntschli. *Staatswoerterbuch* Art. *Rechtsphilosophie*). "There is no law [*Recht*] from nature; law exists only through institution." (Lasson, *Rechtsphilosophie*, p. 27). But it is impossible to suppose that this is anything more than a quarrel about words. "No one could seriously maintain that the system of rights and obligations, as it is anywhere enforced by law,— the *jus* or *Recht* of any nation—is all that it ought to be." "There is a system of rights and obligations which should be maintained by law, whether it is so or not, and which may properly be called natural." (Green Phil. Works Vol II, p. 339).

In the case of the writers quoted above as denying the existence of *jus naturæ*, only a little effort is necessary to show that their opposition is really directed against the name rather than the thing. Thus Stahl goes on to say, "What lies at the

bottom of this concept 'natural law' are the thoughts and precepts of God's world-order—the ideals of right; but these, as we have seen, have neither the empirical determinateness nor the binding force of law. They are fundamental principles *determinative of the proper construction of a social order* not already valid laws of that social order." So Bluntschli says in a note to Book IV, chap. 9, of the Theory of the State, "Certainly the free will of man is able to affect and alter in many ways what is right and just, but the greatest part of this has been fixed from everlasting by the order of the world and the nature of men and circumstances, and is altogether independent of the will of man. Most right is not invented but discovered, found not formed." In like manner Lasson brings back under the name of the *just* [*Das Gerechte*] what he rejects as natural law [*Naturrecht*]. "Set over against *Recht* is the Just, which is deduced directly from universal nature, from the pure expression of reason, and from the historical process. The Just forms the ideal standard for *Recht*, a standard to which it never fully attains," p. 231. [1]

[1] Neither Bluntschli nor Lasson are perfectly consistent in using *Recht* as meaning exclusively *positive Recht*. Thus the former, when speaking of the revolution, says, "In many cases the *higher suppressed Recht* of the nation through the revolution attains to its existence and to its development, and rends asunder the unworthy, artificial bands with which the *formulated, historical, legal Recht* has chained the life of the people." (Politik, p. 207). Similarly, from Lasson, "*Positive Recht* is a high good, but not the highest. Over against its formal determinateness, and possessed of higher *material Recht*, stands another, viz., the requirements of equity." (Rechtsphilosophie, p. 304). But, of course, if there is no other *Recht* but positive, then it is improper to talk about a "higher, suppressed *Recht*" or a "higher material Recht." Plainly this antithesis of "legal" and "suppressed," of "positive" and "material" *Recht*, is the same old antithesis of positive and natural *Recht* in another dress.

Some writers as Bluntschli who have affirmed the existence of this absolute right have denied that it has *reality* in direct contradiction to the eighteenth century doctrine that it is the only real right. Evidently the controversy again is wholly about words. If reality is so defined as to be equivalent to "enforced by the state," then of course the absolute order of right is not real; and of course the revolutionary writers never called it real in any such sense. But, if we mean by real that which exists of absolute necessity, which exists independently of the consent of any will, which cannot even be conceived as non-existing, we surely need not hesitate to declare that the absolute jural order possesses in the highest degree the marks of reality.

But possibly this controversy as to which has truest reality, absolute *jus* or positive *jus*, means rather which is most truly binding in any given time and place. To this question, again, the answer must be determined according to our understanding of the question. Is the absolute right binding on the judge as a judge? Of course not. As a judge he is the organ of a definite organization, the state, and the system of right he must as a judge apply, is the will of the state as expressed in positive law. Is natural law binding on the legislator as such? Of course not. He too is an organ of the state; and, although he moves more freely than the judge, his freedom is within definite limits fixed by the will of the state as embodied in the fundamental positive law. Is natural law binding on the state as such? Certainly it is; for it is the very office of the state to be the organ of the absolute jural order—only as performing this function, can its existence by any possibility be justified. Finally, is natural *jus* binding on man as man? Again we must answer, yes. Each person is indeed a subject of a con-

crete state, and so naturally bound to obey its law; but he is in a still higher sense a subject of the kingdom of right or the kingdom of God, and must recognize allegiance to the latter as supremely authoritative, which is simply saying that he must obey conscience and God rather than man. "But" it is objected, "does not this make the actual jural order a prey to the attacks of every half-crazed fanatic, as in the French Revolution, or in our own struggles against slavery and kindred evils?" Yes and no. Yes, just as does every theory of morals in that it asserts the supremacy of right. But no, if it is meant that there is something peculiar to the concept natural *jus* which leads in an especial sense to anarchism. The trouble with the revolutionary fanatic is not that he asserts the supremacy of the absolute order, but that he fails to apprehend the nature of that order. In the first place, he thinks of it as a mere aggregate of unrelated and hence unlimited rights. To him the affirmation that he has a natural right to anything means that his claim is not relative to, or limited by, any other claim in the universe. But as we have seen *jus naturæ* is in truth a great, rational, organic whole. Each right or principle is relative to every other and subordinate to the whole. In that order or system of rights, no one is more vital than the right to have maintained a positive objective order through which the absolute order may be at least partially actualized. Particular rights of lesser degree must be so interpreted as to consist with the realization of this empirically most indispensable right. To it, they must in case of necessity give place. Thus it is conceivable that the right to pursue happiness, the right to personal freedom, the right to freedom of faith, even the right to life itself, might justly have to yield to some higher right or to the general right. But this is not in spite of *jus naturæ*. but *through jus naturæ*;

i. e., this very exception to the usual order must be justifiable in so far as, and because itself a part of the absolute jural order.

In the second place the revolutionary fanatic errs in practically treating the natural jural order as absolute not only in the sense of being independent of mere will, but also in the sense of being independent of all conditioning circumstances, or at least of present conditioning circumstances. But this is wholly contrary even to the best eighteenth-century definitions of *jus naturæ*. For it is the very essence of *jus naturæ* to be that right which is "determined by the nature of men and circumstances." On that theory the right of to-day is not determined by that of yesterday, nor by that of to-morrow. But at each moment, under the conditions constituted by that one set of circumstances, there is a single definite order which is absolutely and from eternity the right for that moment. The absolute jural order, thus understood, gives no handle to fanaticism; is, on the contrary, the very best antidote for that form of madness.

After what has already been remarked, it goes without saying that the absolute jural order is the place where we must look to discover the basal prerogative on which the state rests. Lasson's assertion that "In order to create *Recht* men must have gained the authority therefor through *Recht*," is a meaningless paradox, unless we suppose the author to be wavering between his own definition of *Recht*, as the law enforced by the courts, and the not uncommon use of the term as equivalent to *Naturrecht*. The true statement of the case must be that "from *natural jus*, man obtained the authority to create positive *jus*, from the absolute order the authority to create a positive order." [1]

1. So Bluntschli, justifying the people or the ruler in certain cases of a violent overturning of the established order, says "Both appeal to *the law of nature and reason* which furnishes the foundation and limits of historical, formulated law." (Politik p. 31.)

7. JURAL IDEALS.—In the preceding discussion we have ignored the possibility of controversy as to the true absolute jural order. We have ignored, indeed, all question as to the knowableness of that order. We have defined that order, not as something written on the heart of man, or given in reason, or deducible from the nature of things, or revealed in the mutual adjustments of the world, but simply as that right which is determined by the very nature and mutual relations of things. But of course the jural order in which we are interested, the jural order which has significance for actual society, must be some particular version or ideal of the absolute order. Here is forced upon us the fact of varying ideals. Even here, however, it is not necessary to consider the origin of these ideals. The endless controversies as to how men gain the ideas they have as to what is right and what wrong need not delay us. The plain fact is that they have ideals—from what source matters not—the supremacy of which they are constrained to recognize, unless they deny the reality of the moral imperative. Among these ideals we distinguish three of more or less importance to our purpose; (a) the *absolute* jural ideal; (b) the *individual* jural ideal, and (c) the *common* or *prevailing* jural ideal. By the *absolute jural ideal* is meant that conception of the absolute jural order which would exactly correspond to the thing itself—the conception supposed to be present in the mind of the Absolute. As here the conception and the reality, — the jural ideal and the jural order,—must be supposed to have perfect correspondence, we shall in future use the phrases interchangeably.

What is meant by individual and common ideals is sufficiently evident without definition. We are chiefly interested in the consideration of their *relative* authority. First, as far

as the individual is concerned, it goes without saying that his own version ought to have final authority in all cases where it imposes upon him an obligation not imposed or even denied by the common ideal. This is merely affirming the supremacy of conscience. Doubtless one of the highest obligations contained in the purely individualistic ideal is that the individual should in most things submit to the prevailing ideal. But, if in any particular case the common ideal is not a part of the individual's ideal,—if the individual believes himself called upon to violate the common ideal,—then, of course, he has no choice in the matter. He cannot morally act otherwise. To deny this is to deny the reality of the ethical imperative, to destroy all morality.

This inevitable discrepancy among ideals compels us to reconsider the account of rights given above (p. 10). There it was assumed that a right must be of such a nature as to have an exactly correlated obligation. This is doubtless true in the absolute jural order or ideal. But in actual society all the natural rights in which we can have any considerable interest, are nothing more than *alleged* or *supposed* natural rights. Sometimes, doubtless, there exist behind these, *real* or *absolute* natural rights; and each to himself can morally justify his supposed rights only by believing them to be identical with the real, absolute rights. The concept of absolute rights is, therefore, metaphysically indispensable. But these absolute natural rights are not the natural rights which we can hope to actualize. In practice we can deal only with *conceptions* of rights, *supposed* rights, *ideal* rights. Among these, plainly, there can be no exact correlation of rights and obligations. On the contrary, conflict of rights is not only possible but also inevitable. For, of course, it is the duty, and so the right of each

to do that *which is to him* duty, however it may appear to others. But it is also the duty and right of those others to do what appears to them duty, even if that involves compelling the first person to do what he looks on as wrong. "But," perhaps the objector will say, "have we in such a case any question of *rights*?" Certainly we have, and especially is involved that class of rights which were earlier designated as prerogatives. Men will persist in saying that, in the case just supposed, the first person had a right to do his duty, and that the other persons had the prerogative of compelling him to do something else. In making such a declaration, we evidently do not mean to attribute to either party a right in the same sense that absolute rights exist, *i. e.*, a right with an exactly correlated obligation; nor on the other hand, are we merely tautologically affirming the existence of a duty. Even under the conditions of conflicting subjective ideals, asserting that the community has a certain *duty*, is a different thing from asserting that it has a certain *prerogative*. The former is an answer to the question, "Why should that certain thing be done?" The second is an answer to the question, "By what warrant can it be done?" This, I conceive, is the true key to the proper description of a prerogative under the actual condition of conflicting jural ideals, *i. e.*, under those conditions, a rational or natural prerogative is a claim to control the action of others *having so much of foundation*, — how much that is we need not here discuss—that the person exercising it *can plead it as adequate warrant for his action* before the bar of reason, before the bar of the Absolute Judge. Yet the one or many who oppose his claim may have an equally valid prerogative; may also be able to stand and answer the ethical *quo warranto*; and out of the mutual conflict may come the true absolute right which it

is the will of the Master of All shall in the end prevail.

In the foregoing discussion we have asserted the supremacy for the individual of his own ideal. The case for the community is not materially different. The community—the dominating elements in the community—are, of course, ethically bound to enforce their own ideal. If the official, the particular person acting as the organ of the community, can not conscientiously do so, he must give place to those who can.

8. THE GENERAL WILL.—From the conception of an ideal which receives general acceptance in a community, we easily pass to that of a *General Will.* By some writers these two concepts are scarcely distinguished. The general will is defined as the common ideal, public opinion, that version of the jural order which most members of the community think ought to prevail. Some go a step further, and add to the concept another element—*desire.* The general will, according to this putting of the case, "is *a common desire* for certain ends to which the observance of law or established usage contributes," "a sense of possessing common interests, *a desire for common objects* on the part of the people." (Green Phil. Works, vol. II, p. 402.) This is better material for a general will than mere opinion, but it is still too weak. As I understand it, the general will is that version of the absolute ideal to realize which is the more or less definite, conscious *purpose* of the mass of persons who make up a community. This purpose is commonly latent. It usually realizes itself only when called out by some flagrant violation of the common ideal. Even then, it may be defeated by the accidents of circumstance; or it may be overridden by the physical force of an unscrupulous soldiery. But, in the long run, it must prevail; for, in the long run, the common purpose will have at its command the overwhelming physical force of the community.

If some err in making the general will mere public opinion, others fall into the opposite and much more serious fault of treating the general will as if it were a *literal* will, a *faculty* of willing, a capacity of being determined in accord with an idea of self-satisfaction. But, of course, a general will, in any such sense, can no more exist than a general stomach. The general will is nothing more than that purpose which is practically universal among the individual human persons who make up a given community.

9. THE STATE.—We have now passed in review the chief concepts which are fundamental in political philosophy. We have remarked on the central position of the person, and on the nature and importance of personal rights. We have asserted the reality of an absolute, imperative, jural order. We have seen that this order can present itself to society only in the form of a particular ideal of right. We have seen, also, that the version of the ideal which most interests us, as alone being capable of realization, is, in the long run, that version which manifests itself as the general will,—a something which it is the common purpose of the community to enforce. We must now consider that instrumentality through which this actualization of the general will is made possible, viz.: *The State.* By a state we mean a community within the limits of which a particular version of the jural order is coercively maintained through the instrumentality of persons more or less determinately set apart for that end.[1] Commenting on

1 The occupation of a definite portion of the earth's surface has been purposely omitted from the definition of the state. For this fact about the ordinary state is a mere accident of a civilization which has passed the nomadic stage. A wandering horde is for the purposes of this essay a state. It, of course, may be a very im-

this, we note that there is always a *particular version* of the jural order which is made binding. There is always a positive *jus*,—the *Recht* of recent German writers,—a *jus* impregnated with will, a *jus* marked with the special stamp of the state. This *jus* need not exist in the form of positive enactments, though it usually does. It may be mere customary law. But it can not be mere *custom*; for it is not positive law save in so far as men understand that some more or less definite set of persons purpose to secure obedience to it, even, when necessary, through physical coercion. So Lasson, "Under Recht we understand the conception of those prescriptions concerning the conduct of men which, in an extensive human community, are universally recognized and valid, and in this sense that, first, in case of doubt there is a place from which proceeds an *at-all-times binding decision* as to what is valid as *Recht*, and that, secondly, over against the resisting will there is *a certainly effective power to compel obedience* to the prescription."

Again, the above definition affirms the necessity of certain persons being more or less definitely appointed to the task of enforcing the recognized *jus*. "If there is to be a state, there must also be a magistracy" (Lasson). But from this it is not to be understood that we deny the name state to a community wherein there are no persons continually and exclusively devoted to the magisterial task. It is conceivable that in some very primitive community there may be no magistracy other than a purely extemporaneous one; that, when a

perfectly developed state; but, so long as some particular version of the jural order is set up as binding on all, and some particular persons habitually enforce that version on the community at large, we have a state that needs to be justified quite as truly as one in the highest stage of evolution.

violation of the customary or established law of the community occurs, the community in general rise up to punish the offender. But this must be distinguished from the case of mere spontaneous justice. In order that the community in general should constitute a magistracy, this procedure of rising to put down offenders on occasion must be *habitual*, and hence *anticipated*. Doubtless, also, in the case supposed the habitually extemporized magistracy would have a considerable degree of customary organization. The elders of the community would commonly take the lead, and among them some few persons would be most prominent. But, if the state of things is such that no public authority exists, that the social order is maintained only through the effort of each one to maintain his own right, if fist-right only prevails, then we can not by the utmost stretch of language be said to have any state.

But, again, it should be emphasized that, beside a special version of the jural ideal which has received the stamp of the state, beside the magistracy to determine, proclaim, and enforce this authorized version, there is implied in all this a fundamental political order in accord with which the empirical magistracy exists. This governmental frame-work is not merely constitutional law as defined in written documents, or even constitutional law under the definition of Dicey as something enforced by the courts. Often its most important constituents are mere matters of usage, indelibly written in the habits, traditions, and instincts of a people. But, whether written, or embedded in judicial decisions, or merely customary, a constitution must always be present. *Without a constitution there is no state.* It is in this fundamental structure of the state that we approach most nearly to the very thing itself.

This is the state's scheme of organization, its skeleton, its ground-plan, its body. Yet even this is not the state. For the state is not the plan of organization, but the community organized in accord with that plan. In like manner the state is not the magistracy, though without a magistracy there is no state; and the state is not positive law, though without positive law there is no state. But the state is the community, permanently organized in accord with a definite, partly free and partly natural, order, and which in accord with that plan of organization possesses agents to determine, proclaim, and enforce the communally valid, authorized version of the jural ideal.

CHAPTER II.

THE REALITY OF THE PROBLEM.

"By what right does the state exist and exercise restraint over the individual will?" That this question is a legitimate one, that it calls attention to a real difficulty created by the very existence of the state,—this at first sight seems too evident to need argument. But when this question is brought into relation with much of current political philosophy, it seems to be so entirely alien to the tone of that philosophy, it so evidently implies, with reference to the nature and relations of the individual and the state, doctrines which are seemingly rejected in that philosophy, that it becomes necessary to justify the very asking of the question, to show that the implications contained therein, when properly understood, are altogether undeniable. To do this will be our task in the present chapter. What then are the doctrines necessarily implied in the asking of the above question, "By what right does the state exercise restraint over the individual will?" and have the doctrines, thus necessarily implied, become untenable? A consideration of the above question will bring out two principal implications. *First*, the continued existence of the state depends on the free and so responsible action of human beings, and, therefore, for the existence of the state men may properly be called to account. *Secondly*, under the absolute jural order, the right of the individual to free self-determination is so evidently original, primordial, essential, that every act limiting that right demands special justification.

1. These propositions we will consider in order. *First*, then, the existence of the state depends on the free and responsible action of men, and, therefore, for its existence they may properly be called to account. This proposition, it is scarcely necessary to remark, is entirely out of harmony with much that is said in current political philosophy, provided the latter be understood literally. Thus we read, "As soon as man lived, he lived as a human being, he lived in communities, and *therefore politically* [*i. e.* in the political state]." "*The state is older than man. The state first begets individuals*, without it they would not be." "The state in its general nature is the organization of a human community developing itself in accord with *natural necessity* [Naturnothwendigkeit] etc." "*The state does not come into existence through the will of men, nor does it continue to exist through the will of men.*" These passages are all taken from Lasson's Rechtsphilosophie, but they are fairly representative of a method of expression increasingly common in political philosophy.

Now, plainly, if such statements are literally true, there is no room for our question, "By what right does the state exist." Men can not be called to account for the origination, the continuance, or the conduct of the state, if they are not responsible for any of these. But, without doubt, such a literal interpretation of passages like those quoted above would be an injustice to the author mentioned as well as to other contemporaneous writers. The fact is, we are dealing with the metaphorical and, to say the least, hyperbolic expression of the natural reaction against the tendency of eighteenth-century political philosophy to exaggerate the *artificial* element in social arrangements and, in general, *the freedom and rationality* of human beings, to the neglect of those constituents of

every social order which have developed through the unconscious working out of the unfree elements in man's nature,—his instincts and appetencies. It would not, perhaps, be difficult to make a plausible case for the thesis that our own age has gone to an opposite and no less false extreme,—has practically eliminated human freedom, and made the evolution of the state substantially the same as that of a plant, the whole future of which is implicitly contained in the seed germ and needs only the proper external conditions to secure its realization. But it would doubtless be juster to treat the exaggeration as principally rhetorical. As far as Lasson is concerned, a single further quotation would perhaps be adequate to prove the correctness of this method of interpreting the expression cited above. Thus he says (p. 297), "Although the state is from nature—still it would be the greatest error to represent the human state as analogous to the so-called animal states. The latter exist altogether independently of a free will and determination; but the human state, although according to its being given in nature, *is yet established through those wills* whose inner nature it mirrors, *and is erected as the free object* of their activity."

But to put the matter beyond question, let us examine the various concepts under which the state seems to be set up as an entity independent of man. Three of these are more or less clearly distinguishable in current thinking. *First*, it appears to be taught by some that political organization is a *logically inseparable* function of human communities, that the state is a *metaphysically necessary social entity*,—a complex of co-ordinated and sub-ordinated relations brought into being by the mere fact of the mutual relations of men in society and in no sense dependent on their free activity. *Secondly*,

it may be asserted that the state is *a natural organism*, and so of course neither free nor responsible. *Thirdly*, some seem to teach that the state is *a true person*, having a real personality other than, and independent of, that of the individuals composing it.

(*a*) Let us consider the first. The state is *a social entity* necessarily brought into being when men are found in communities. According to this theory, if a dozen men from as many different communities were simultaneously wrecked on a hitherto uninhabited island outside any existing political jurisdiction, the moment they came into relation with one another a state would exist without any need of action on their part. If one of them, coming to think of the matter, should say, "Let us form a state," he would be talking nonsense; for already a state was in existence, and he could not help its existing if he desired to do so. Now, it seems hardly necessary to say with reference to all such statements as these, that any person making them must have in mind some especial definition of the state which practically identifies it with society in general. (Cf. Janet, Art. Polit. Sci. Lalor's Cycl.) For surely the above statement can not be admitted as true of the real state,—of the state according to any accepted definition. Undoubtedly the mere juxtaposition of men in time and space does bring into existence a complex of reciprocal functions and relations, of rights and obligations, and that by the strictest metaphysical necessity. Men can no more hinder this by their free choice than they can make two and two equal five by an act of will. Further, it is undoubtedly true that one of the rights thus brought into existence is the prerogative of government, otherwise we should have to deny the existence of that prerogative; since, as has often been shown, political preroga-

tive can never come into existence by the free choice of men. But, that the totality thus brought into existence by the mere juxtaposition of men is not a true state, is sufficiently evident from the characterization of the state universally prevalent even among those writers whose opinions, or at least whose expressions, are here criticized. Thus Lasson, "A human community *which possesses an organized highest authority as the supreme source of all compulsion* is called a state." (Rechtsphilosophie, p. 383). "Wherever there is a state, there is also a *magistracy*, a man or several men who in the last resort exercise authority, but always in the name of the state." (Ibid., p. 302). But of course the mere juxtaposition of men in time and space does not bring into existence a magistracy; it therefore does not bring into existence a state.

(*b*) We have thus disposed of that method of lifting the state above human freedom, of relieving men of responsibility for its existence and maintenance, which represents it as an abstract entity brought into existence by strict metaphysical necessity when men find themselves in the merest space relations to each other. What now shall be said for that method of reaching the same result which declares the state to be *a natural organism*, and so neither itself free or responsible, nor admitting the freedom or responsibility of men. Here, again, we are dealing merely with excess in the use of figures which properly employed are of great value. Organism is an almost indispensable concept in social philosophy; yet it is frequently used in such fashion as to be simply ridiculous, and that, too, in spite of vigorous protests from some who are most fully identified with the modern school of thinkers.[1] Such an

1 (See Roscher's Political Economy, Introduct. Ch. I, Sect. 13 Note.)

extreme and unwarranted use of the word organism is that which applies it to the state in such a sense as to place the state outside human freedom.

But to settle the question thoroughly let us try to realize just what an organism is. This is best done by putting this concept in contrast with two other closely related concepts, viz.: the mechanism and the organization. In the first place, these three all belong to one genus. They all are functional wholes, *i. e.*, they consist of different parts performing different functions, all of which parts are co-ordinated and sub-ordinated to the accomplishment of a common corporate end. Such is their common element; their differences are not far to seek. A mechanism is a functional totality, the construction, regulation, and energizing of which is *from without.* In both the organism and the organization, on the other hand, the original co-ordination and sub-ordination of parts, their subsequent maintenance and regulation, the energy that conditions their activity,—all these are *from within.* But, while they have in common this element which we may call self-determination, the two are sharply contrasted in that the organism is self-determined in accord with the law of its being which it *blindly and of necessity* obeys, while the organization is self-determined, *freely and consciously*, with reference to ends rationally contemplated and pursued. In brief, the mechanism is a functional totality rationally but *objectively* determined; the organism is a functional totality rationally, *but unconsciously* and *of necessity self-determined;* the organization is a functional totality which is rationally, *consciously, and freely* self-determined.

Now, in the light of these definitions, is there any propriety in applying the term organism to the state? Yes; though this

is true chiefly because the state is usually conterminous with a true historic community, and not because it is a state. Such a community has, as its normal law of expansion, organic growth rather than accretion. Further, such a community, in that the natural reciprocal functionalities of men largely work themseves out without free conscious choice on the part of the individual, takes on the character of an organism. So, of course, any state which is an organization of such a natural historic community partakes of the same qualities. Further in its own right the state has something of the organic character; for the particular functionalities which are necessary to its existence,—acting in concert, leading or following, deliberating, judging, enforcing,—these all have a natural basis. Men half instinctively find their places and proceed to fill those places.

But, after all, while there is some basis for the designation of the state as an organism, the metaphor is not fitted to go on all-fours. The state is a moral, not a physical organism. It increases by a sort of growth, but not the growth of a plant, which is according to strict natural necessity. It is within the choice of human parents to restrict their offspring. Persons, by birth or free choice present in the community, are not members thereof as the hands or the feet are members of the body. The individual may be very uncomfortable when separated from the community; but he *can survive* that separation. The hand, cut from the body, perishes. So the natural reciprocal functionalities of human beings, even that of the opposite sexes, does not necessitate the actualization of that relation. Marriage is still subject to man's free determination. Still less necessary is the actualization of the political tendencies inherent in man. Still more are they subject to his free will. The very essence of a state is to be a community which is *formally, con-*

sciously, freely organized, — which, therefore, has passed beyond the stage of a mere organism into that of an *organization;* that is, it has become a free, conscious, rational working-together of men for a common end. Nor is this to insist that communities could exist or have existed in a non-political state. If we admit the current doctrine that government came into existence at the very beginning of human society, still it is indisputable that the process of its becoming was *a free* and *not an organic* process, — that society came to be political, not as the branch put forth the bud, but as the individual freely, though in answer to powerful instincts, takes to himself a friend or wife. This whole case is well expressed by Bluntschli, though he himself has been justly criticised for an exaggeration of the organic element. "The state is not a product of nature and therefore it is not a natural organism. The *tendency* to political life is to be found in *human nature*, and so far the state has a natural basis; but *the realization of this political tendency has been left to human labor and to human arrangement.*" (Theory of the State, p. 19)[1]

(*c*). We have thus seen that the state is not relieved of accountability as being an abstract entity brought into existence by metaphysical necessity through the simple juxtaposi-

1 It is very common for writers who incline to make the state a mere natural product to refer to Aristotle as their forerunner, because he calls man a political animal. But, as a matter of fact, Aristotle never held to the doctrine of the naturalness of the state in such fashion as to remove it from the domain of human freedom, or to represent the becoming of the state as like the germination and growth of a plant. On the contrray, he held to the practically universal view of his times that all society was once in a non-political state and that government was the invention of the great man whom he characterizes "a great benefactor of human kind." (Politics, p. 7, Weldon).

tion of men in time and space, and, again, that it is not freed from accountability as being a natural organism and, so, unfree and irresponsible. It remains to remark that it is not *an independent person* in any such literal sense as to relieve human beings as such of responsibility for its establishment and maintenance. Now, the reader could not be blamed for feeling some impatience at any attempt to prove a proposition so evident as this; yet the methods of expression, characteristic of our time, almost compel it. We hear much about "group psychology," "the group will," etc. The state is declared to be a real person, a true end for itself and not a mere means. We are told that "The state has an independent origin and an independent will"; that neither the people, nor the aristocracy, nor the king is sovereign, neither one man nor all men, but only the state; that the magistracy receive their commission neither from themselves nor from any other man, or set of men, but only from the state.

Very extraordinary expressions these from the Anglo-Saxon stand-point! Very extraordinary, surely, if one is expected to interpret them literally. But here, again, we are doubtless dealing with figures of speech. And, certainly, there are facts about the state which make the figure of personality quite indispensable. Indeed, it is already evident from the preceding discussion that, as applied to the state, *person* is a far juster metaphor than *organism*. For, in so far as a community by a process of conscious, free, rational organization lifts itself out of the organic condition of a community and becomes a self-conscious state, it approximates the true life of a person; every organization being from the nature of the case a corporate person. Still we need to remind ourselves that the most perfect organization,—that which acts the most

freely and with the most perfect rationality,—is only *a sort of person.* It has no true concrete consciousness, or understanding, or reason, or will. The actual will which we call the will of the state is, after all, only the concurrent will of many individual persons.

Of course the purely individualistic character of the momenta which make up the so-called national will is more or less obscured by their vast number, their hidden working, their individual insignificance. The public official seems often constrained to a better and wiser course, or a worse and more foolish course, than he would himself have followed, by a will which he carries out in spite of himself, and which, further, can not be distinctly traced to any one man, or set of men. The infinite complexity of the momenta which thus determine political action leads us to lump them off as the will of the state. We easily and naturally fall to talking about the group will, the group judgment, the group psychology. All of which is well enough, if only we do not forget that these are metaphors. For, of course, this seeming obedience of the magistrate to an extra-human will is only seeming. The whole case can and must be explained by the operation of forces,—such as the influence of public opinion, prejudice, obstinacy, tradition, etc.,—which belong to the psychology of *individuals.* The official is only a man among men. He cannot help being influenced by the outcry of a thousand disappointed office-seekers, or by the righteous indignation of a great number of his fellow-citizens whose eyes have been opened to some abuse and who are not afraid to protest.

Exactly speaking, then, there is no such thing as a group psychology, but only *the psychology of the individual as determined by his relations to the group.* If a man lives the life of

a hermit, his conduct is determined by one set of motives. If he lives in a community, but unmarried, he is influenced by a much larger class of considerations. If he becomes a husband and father, a new world of interests is opened up to him. If he is given a responsible position in some important corporation, yet another class of motives is added to his whole sum of will-determinants. If, now, he becomes the chief magistrate of a great nation, a vastly greater expansion takes place in the forces which go to determine his conduct. But all this is as old as thinking. It was perhaps too much neglected in the revolutionary epoch. Man was thought of too much as an isolated, self-centered being, capable of acting with perfect rationality in every conceivable circumstance. But this too sanguine view of human nature, which exaggerated at once man's freedom, knowledge, and rationality, is surely no more unscientific than that political mysticism which has grown out of the reaction,—a mysticism which enthrones in awful dignity far above the will of the individual a mysterious, inaccessible, supreme personality—the state.

The simple fact is that, setting aside the conception of deity, there is known to men no other personality, no other reason, no other understanding, no other will, than that of the individual human being. It is, therefore, impossible for him to escape responsibility for the existence of government, for the exercise of restraint over the individual will, by declaring that such restraining is not his act but that of the state,—a person other than, and independent of, the individuals composing it. Of course no particular person can justly be burdened with the whole responsibility for the action of the state; since he is only one of many momenta which together determine that action. Further, all can not be burdened with the whole

responsibility; since in the state, as everywhere else, such elements as tradition, prejudice, etc., come in to diminish the total of free momenta in the whole number of forces, and so to diminish the total of responsibility resting on any or all. While, however, men are less responsible for much of political action, because, from the nature of the case, less free than in other relations, still this reasoning can never go so far as to eliminate the fundamental responsibility for the existence of the state as such. For the state could never have come into existence, nor could it continue in existence a single hour, but for the free, conscious, and, therefore, responsible action of individual human beings.

II. We have thus seen that one of the two implications which furnish grounds for objecting to the propriety of the question, "by what right does the state exist and restrain the liberty of the individual," is a proposition altogether incontrovertible. What now of *the second postulate?* What of the assertion, also implied in our question, that to the individual belongs an original, primordial right to free self-determination such that every restraint on that freedom requires special justification? Here we seem to strike still more serious objections. For nothing is more common nowadays than the assertion that there is no such thing as a natural, individual, personal right, and so, of course, no particular right to free self-determination. "The first step must be to rid our minds of the idea that there are any such things in social matters as abstract rights, etc." (Jevons' State in Relation to Labor, p. 6). "In ethics or theology no place can be found for natural rights inhering in the individual." (J. L. Davies, Lond. Spect., Oct. 12, 1889). "There is no universal human right to personal freedom, outer or inner freedom, freedom of

conscience or of faith, etc." (Lasson, Rechtsphilosophie, p. 258).

Here, again, one scarcely need remark, that, if this sort of thing is true literally, if men have no rights which exist prior to, and independently of, human enactment, then there is no more sense in asking by what right does the state exist and restrain the liberty of the individual, than to ask by what right does man use the stream to turn his mill, or the crooked stick to plow the earth, or water to satisfy his thirst. If the measure of man's claim on his fellow men is the will of men, then of course, he is a mere thing, not a person, not an end to himself. His subjection to control has no moral significance whatever. But here, again, it is of course impossible to suppose that the expressions commonly employed are to be understood literally. In some cases the context will sufficiently explain the real meaning. In others we must assume that the full significance of the words is not realized. For, consider the monstrous consequences of such denial that men have natural rights. Suppose two sailors simultaneously wrecked on a hitherto uninhabited island outside any political jurisdiction. Now, if men have no natural rights, *i. e.* rights not depending for their existence on the enactment of the state, then there is absolutely no moral obstacle to hinder one of them from shoving his fellow over the cliff and into the sea, as if he were but a fragment of the rock on which they stand. But, of course, none of the above-mentioned writers hold any such extraordinary doctrine. They all doubtless believe that each of these men in our hypothetical case would be under morally valid obligations to the other, and each would have morally valid claims on the other. But such claims which are morally valid even in the absence of express enactment by political superior,

—these are exactly what men mean by natural, inborn rights. Surely, we must say with T. H. Green, that "the state *presupposes* rights and the rights of individuals," (Philos. Works, Vol. II, p. 450), or with Mulford, "In law there is only *the formal recognition*, the deposition of rights, it is not creative of them." (The Nation, p. 77).

But, if there could be any doubt that individual rights in general are presupposed in political philosophy, there is absolutely no room for question as to the existence of the particular right of self-determination; for this conception is the necessary postulate of any system of ethics whatever, indeed of the very conception of the moral. Right, duty, obligation, the moral,—these terms can have no significance save with reference to the free self-determination of persons. The most elementary proposition of an ethical sort, that which asserts it to be the duty of a given subject to do thus and so—such a proposition, by necessary implication, affirms also the right of that subject to liberty; for only through liberty is the performance of duty possible.

But, of course, this is nothing new; nor is it to be supposed that the writers above quoted need to be taught it. Probably the current denial of natural rights is only a denial of some particular doctrine or theory of natural rights, a denial that there is any such thing as an unlimited, non-forfeitable, never-to-be-trespassed-upon right even to liberty. If this be what is meant, it is of course quite true, though it has been said in rather extraordinary fashion, and with too much of an inclination to speak as if it were a new discovery. As a matter of fact, by most writers in every age it has been taught not merely that there are limits to the individual's right of self-determination, but also that such limits are necessarily

contained in the very idea of a right. A right as such is self-limiting; for its affirmation implicitly contains the further affirmation that every person as a person possesses the same right, *i. e.*, it of necessity correlates itself with an obligation. Further, the right of free self-determination is limited by the rational ends for which it exists. To be free is not the end, *but the means*, of being a person. It is a necessary *condition*, *not the goal*, of the moral. To be a person is not to be a mere center of spontaneity, a fountain of self-determination, it is to be a fountain of *rational* self-determination, of spontaneity consciously regulated with reference to a rational good contemplated as its end. Still, again, that rational good cannot be conceived as a particular good. It rather forms one part in a great, articulated, organic whole of good, a whole which includes and harmonizes all lesser, particular goods. Thus every right, and of course the individual's right of self-determination subsists in, and is limited by, the organic system or order of right which is fixed by the totality of circumstances that condition the individual's relation to the absolute good in any given time and place.

But, though thus limited by the organic order of right in which it subsists, the individual's right of self-determination is the essential, primordial concept of that order. It is the basis, the condition, the necessary implication of all moral or jural ideas or systems. Every objective, empirical limitation of it is, therefore, presumably wrong, and needs special justification; needs to prove itself a limitation determined by, and necessary to, the rational, absolute order of right. That in any given case the individual has a right to free self-determination goes without saying. The burden of proof to the contrary rests on him who would limit that liberty. We therefore con-

clude that the implications as to the nature and origin of the state, and the nature and claims of the individual contained in the question "by what right does the state exist," are liable to no sound philosophic objection. The problem therefore presented by this question is a real one. The more particular definition of this problem will be undertaken in the next chapter.

CHAPTER III.

THE PROBLEM DEFINED.

In the preceding chapter we have maintained that the question "By what right does the state exist?" presents to the student of political philosophy a real problem. In doing this we have taken for granted a sufficiently clear understanding as to the nature of that problem. But, before proceeding further, before undertaking a critique of the solutions which have been offered, it will be necessary to have the problem more exactly defined. For the course of speculation on the matter shows very plainly that different writers have not kept one and the same problem steadily before them, that, on the contrary, it has received a great variety of interpretations. Let us first, then, make clear just what is the question to be answered. To begin with, we can shut out one or two interpretations of that question which are quite common but very plainly erroneous.

In the first place, though our problem is often spoken of as being the explanation of *the origin of the state*, it is in no sense concerned with the empirical process through which any government, or governments in general, have come into existence. Such an investigation belongs to history or anthropology and could throw no light on our difficulties. Those critics of the contract theory who meet it by denying the historical reality of any such original compact, miss the point of the discussion entirely. The question with the men of the revolutionary epoch was not, how did actual governments come into

existence, but how *could a government justly come into existence.* "No one can well doubt that the family was prior, in time, to the clan or tribe . . . ; but the matter of fact revealed by history has not been the point of chief interest; the speculations run back to *the right of the state to exist* and hold power; to a question of ethics and politics, not of history." (Woolsey, Polit. Science, Vol. I, p. 189.)

Again, it ought not to be necessary to remark that the question is not as to the psychological origin of states, that is, as to the instincts, appetences, passions, the unfree elements generally, which make for the formation of a political order. Such elements doubtless exist and are important. As we have seen already the actual state offers many interesting analogies to the true natural organism. In the very structure of human nature there are correlated functionalities which point toward and tend toward the institution of the state. But, in so far as this is true, our problem has no existence. In so far as the state is a mere natural product of human instincts, it has no need of justification. It is only because and in so far as "the realization of this political tendency has been left to human labor," that is, because and in so far as the state is not an unfree but a free product of human activity, that we are called on to show by what warrant it exists. This seems too plain to need remark. Yet the very writer from whom the above expression is quoted, Bluntschli, after an effective critique of the solutions hitherto offered, especially of the Contract Origin, Divine Origin, and Force Origin theories, offers, as his own solution, the theory that the state originates in the "natural sociability of man." Such an attempt at a solution, of course, entirely misses the point of the problem. The writers whose theories Bluntschli condemned, were seeking to discover, not

what tendencies in man's nature move him toward the formation of states, but what commission justifies him in obeying these tendencies.

But it is time for some more positive definition of our problem. Once clearly stated it will be easier to eliminate the mistaken interpretations often given it. To secure this clearer understanding it will first be necessary to remind ourselves of the fundamental character of political society, to realize more fully the exact nature of the phenomenon or fact about the state which gives rise to the problem. In its briefest statement this fact is that in political society some men or set of men, professing to act in the name of the state, imposes, by force when necessary, a particular objective law, purporting to be the will of the state, on individual men in general. In this proposition several particulars need further remark. Beginning at the end, we note that the objects upon which political authority is exercised are men, persons,—beings, therefore, whose highest good forms the end of every jural or moral order, and whose free self-determination is the very basis of all ethical ideas and systems. Wanton, or *simply unjustified*, violation of that freedom is attacking the absolute moral order in its most vital spot. In the second place, we should realize quite distinctly what is the nature of this political function thus exercised upon free human persons. From the standpoint of the subject, government primarily presents itself as law. In its first aspect this law purports to be a law of right, a principle of that absolute order which actual *jus* imperfectly realizes. If it were simply such a principle, it would arouse little controversy. The assertion of the most elementary ethical belief is the admission that there is an imperative obligation of obedience to the absolute order. But positive

law, the law which the individual meets in political society, is quite different from this. The absolute order has merely rational, abstract universality. When it comes to have some measure of concreteness, as manifested in the reason and will of individual human beings, it seems to have lost its universality, to have become merely subjective and particular. It has all authority for the individual himself, none for others. Positive law, on the other hand, has objective validity, concrete universality. It is the same for me and for my neighbor. But how does it attain to this objective validity? Plainly there is but one way. The purely rational principle must become a command, must be impregnated, so to speak, with will. Some person's particular ideal of the true rational principle must be announced as that version of the jural order which is the will of the state, and then the proper organs of the state must enforce this will upon the individual by all means, even, in the last resort, by physical coercion. It is thus the specific function of government to impose upon the individual, in apparent violation of his claim to free self-determination, an alien will, an alien law. There is no use trying to disguise this disagreeable fact by such euphemistic expressions as that "the submission of the citizen is not to government, but to himself, to his better, his superior self." The evident fact is that the state calls on the individual man to submit to *some other person's* "superior self." Preachers and teachers try to instruct us as to what course our own highest reason approves and to persuade us to follow that course. When they have failed, government steps in and says: "Such and such are the true principles of justice. I command you to obey them. If you do not, I will punish you."

We have thus seen that the subjects upon whom political authority is exercised are beings called to a destiny infinitely higher than that of states, and to a destiny the realization of

which rests upon their possession of the right of free self-determination. We have also seen that the authority thus exercised involves the imposition on these persons, in the last resort by physical coercion, of some other person's version of the absolute law of right. Who, now, are the beings who exercise such high prerogatives? We have but one answer. It is not God, it is not some superior being as a demi-god, it is simply men who perform this exalted function. Here, again, there is no use trying to disguise the fact by mystical talk about the state, its will, and its personality. The state is nothing but man, acting, in so far as he is able, impersonally, *i. e.*, rationally, but still man.

This puts us in a position to realize what most of all is meant by the question, "by what right does the state exist;" to understand what is the real occasion for this demand for a justification of political authority. For it at once suggests itself that the fact about the state which imperatively demands justification is not so much the coercive imposition of an alien law on the free person, but rather the assumption of this high function by mere human beings. That a being, in whom reason and will in perfect harmony embody the absolute ideal, might justly assume to enforce that ideal on beings who, like ourselves, are confessedly unable either to know the right perfectly or to perform it so far as known,—this would probably be admitted without serious argument; but, when such exalted claim is set up for human beings, it is inevitable that the need of some justification should be felt. It is about this point that the great historic controversies have raged. It is this point which we shall look on as the core of the problem. *Where is the ultimate human prerogative on which the state is built?*

At the beginning of this chapter we threw out some meth-

ods of treating the general problem of the right of the state to be, as not concerning themselves with the really essential question at issue. We are now prepared to carry this process still further, and it may be desirable to do so in order to make our problem evident beyond a doubt. In the first place, from the emphasis laid on the word prerogative it is evident that, as the problem is here interpreted, it can not be solved by any process of showing the importance or necessity of the *end* which the state serves. Of course it is conceivable that the general demand for a justification of the state might mean a demand for proof that its function is a legitimate and proper one. But the simple fact is that the question has not meant this to those writers that have furnished the great historic solutions. So, when Mr. Morley tosses off Rousseau's problem by declaring that the state finds its justification "in considerations of proved expediency with reference to the special case," (Rousseau, Vol. I, p. 156), it can not be supposed that the author of the Contract Social would have admitted that this solution touches his real difficulty. Rousseau doubtless had as little question as Mr. Morley concerning the practical value of a really good government. But he had a very exalted idea of the sacredness of personality, and he found it difficult to reconcile with that idea the fact that in the state the individual is called on to submit to an alien will. He averred that no such high prerogative belongs to any man or set of men save in so far as the individual has granted it. In this he doubtless erred; but it surely would not help him to repeat time-worn truisms about the greatness and value of the state. "You have a good thing," he would have said, "but *whence your authority to impose it upon me?*" "No one has doubted that state organizations are a necessary part of the system which provides for

the order, progress, and elevation of mankind; . . . but the question is still asked *by what right came they to start into being*, and *who gave them their powers?*" (Woolsey, Polit. Science, Vol. I., p. 189). Doubtless Rousseau's solution which traces the political prerogative to the right of a man to govern himself and his power to transfer this authority by consent to others is quite untenable, but it had the great merit of knowing just what is the mark to be hit and shooting straight at that mark. And the true doctrine can be found only by setting before us just the same object, *i. e.*, the finding of the ultimate human prerogative on which the authority of the state rests.

This same objection applies to any other theory which attempts to justify the state by justifying its mission. Prof. Green's assertion that the state is justified "from the function which it serves in maintaining those conditions of freedom which are the conditions of moral life" is a truth of great significance and value, but it cannot with propriety be placed, as he placed it, alongside the contract theory, force theory, and divine right theory, as a solution of the same problem which they are supposed to solve. For it does not, as do they, present any prerogative as the ultimate prerogative on which the state is built.

Again, the same emphasis laid on the word prerogative shows us that the real difficulty is lost sight of by one who thinks to settle the question by saying that the right to rule is derived from the eternal order of things or from the divinely ordained order or from justice. Of course it is. Probably nobody ever denies it, when he understands the statement. Every man who sets up a theory which attempts to indicate the ultimate basis of political prerogative, tacitly asserts that the foundation of the state is the ultimate jural order. For,

plainly, an attempt to justify the state is simply an attempt to show *where the state roots itself down in that ultimate order*. The proposition, therefore, that the state derives its authority from the absolute order, or from the moral order, or from abstract justice is a formula sufficiently broad to cover the contract theory, the force theory, the divine right theory, the popular sovereignty theory, or any other theory conceivable.

Similarly it may be desirable to emphasize the word human, for it is most decidedly the *human prerogative* that we are in quest of. The mere general declaration, therefore, that the state rests on the will of God is no solution of the question which has absorbed so much interest in political philosophy. To a theist this is a mere truism, a mere explicative proposition. Of course, the state ultimately rests on the will of God,—at least in the sense that he is the author of the empirical universe in which is actualized that order of right which, as determined by the rational nature of things, is eternal like himself. The advocate of the contract theory, of the force-theory, of any theory, if he be a theist, declares that the state rests on the will of God. If he teaches the doctrine that the individual's relinquishment of his right over himself furnishes the commission of the magistrate, then he would assert that such a right to transfer one's authority over self exists as the will of God. So Von Haller would say that it is the will of God that the strongest should rule. And so with the rest. Such vague generalities as these can do nothing toward the solution of the problem. If God is the ultimate author of the right of rule, is it as the one who confers directly the commission, or as the one who has ordained a natural order in which that commission is already by general law conferred? If we conclude that it is the latter, where in the natural order of

things is that prerogative located? Is it in the individual over himself, to become a public prerogative only by transfer? Is it the right of redress which by some mysterious transformation becomes the public right of maintaining justice? etc. ? etc. ?

We have emphasized *prerogative*, we have emphasized *human* prerogative, we perhaps ought to emphasize *ultimate* human prerogative; to insist that we are not concerned with the prerogative of the mere magistrate. Doubtless all would agree that in some sense or other the magistrates derive their authority from the state. Further, most would agree with the assertion, as to Germany for example, that the state thus commissioning the magistrate is not to be conceived as constituted by the people merely, or by the aristocracy merely, or by the king merely, but as being the "politically organized whole, in which the head occupies the highest position, and every member has its suitable place." (Bluntschli, Theory of the State, p. 471). But the question still remains: Whence the commission by virtue of which this complex "politically organized whole" has come into existence? It did not grow, else it could not be called an "*organized* whole." But if it is the product of human freedom, where is the basal prerogative which brought it into existence? What right belonging to the absolute, non-human order of right is the foundation of this positive, humanly-enacted right?

In close connection with the above, it needs to be remarked that the problem, though intimately connected with, is not the same as the question: "Where is the sovereignty of the state located." This last is a problem not of political philosophy but merely of constitutional law. To solve it one has only to examine the structure of the actual political order. But the problem here considered goes deeper. It asks, not what is the

chief prerogative within the state, but rather what is the prerogative on which the state itself rests.

In one, and only one, connection do many recent writers seem to show any apprehension of the real problem, and in that connection they are content to stop short of an adequate solution. That one connection is the treatment of a revolutionary condition of things. Thus Lasson: "But in the course of human history it happens that the regular conferring of power is broken into by means of power, that the magistracy with the physical force actually at its disposal proves to be weaker than the hostile forces pressing upon it, whether this be the might of a different state and of the magistracy representing it, or a power which has formed and organized itself within the state. . . . Every other break in the legal order finds its remedy in the securely established system of rights and its regularly working powers; but this interruption of the legal order, which concerns the highest power itself, *sets in question the whole system of right*, carries with it a menace to all the relations regulated through the legal order, and denies even the power, which hitherto was appointed, to set up again the legal order out of the ruins." In this passage it is evident that we are very close to the real difficulty. Yet, after all, it seems impossible to gather from the context any answer to the question here implicitly contained. In fact the following discussion instead of so answering the question seems to amount to a denial that it can be answered, For, on the next page, we find this statement: "The original form of constructing a legal order through custom again enters after a certain sort in order to create a new legal order in place of that which has been overthrown. . . . . The merely actual magistracy then gains little by little also formal legiti-

macy through continuance and the exercise of power." But surely custom is not a person; it cannot commission any one. Continuance has no power, no authority, no divine right that it can confer legitimacy. The only way to give this doctrine any significance is to suppose behind it some such theory as that the original prerogative is with the people and that the continuance of any government is the proof that the people have tacitly indorsed and so legitimized it, or that God's commission is the ultimate basis of the prerogative and the continuance of a government in similar fashion proves his indorsement, etc. In a word, this theory furnishes no answer to the question here considered, but merely argues that a government may in its initiation be without adequate ethical foundation and yet come to have such ethical foundation through its acceptance by the authority which possesses the original prerogative. What *is that authority? Where is the original constitutive prerogative?* This question is not really touched in any such discussion.

We will now assume that the real nature of the problem before us is made clear, and in Part II, which follows, we will pass in review the solutions which have been proposed.

PART II.

CRITIQUE OF PREVIOUS SOLUTIONS.

CONSPECTUS OF THEORIES

As to the Ultimate Prerogative on Which the State Rests.

I. SUBJECTIVE PREROGATIVE GROUP.

(Authority of Self over Self.)

(1.) *Contract Theory.*

II. OBJECTIVE PREROGATIVE GROUP.

(Authority of One over Others.)

A. Private or Egoistic Prerogative Sub-Group.

(1.) *Right of Redress.*

(2.) *Right of Self-Preservation.*

B. Altruistic Prerogative Sub-Group.

a. Particular Prerogative Class.

(One person over other persons *specially related to him.*)

(1.) *Patrons over Dependants.*

(2.) *The Strong over the Weak.*

b. General Prerogative Class.

(One person over other persons *in general.*)

a Special Divine Commission.*

(1.) *Immediate Divine Commission.*

(2.) *Transmitted Divine Commission.*

(3.) *Providential Commission.*

b Natural Commission.*

(*i. e.*, divine only through the divinely ordained natural order.)

*a** Collectivist Human Prerogative.*

(1.) *A Prerogative of Society.*

(2.) *A Prerogative of The People.*

(3.) *A Prerogative of The Community.*

(4.) *A Prerogative of The State.*

*b** Individualistic Human Prerogative.*

(1.) *A Prerogative of Man as Man.*

(The doctrine of this thesis.)

CHAPTER I.

I. SUBJECTIVE PREROGATIVE GROUP.

Contract Theory.

In attempting a systematic critique of the different solutions which have been proposed for any problem, in this or any other department of study, there is one special fault which no writer can wholly avoid, for which, therefore, the reader should make allowance. This fault consists in unduly emphasizing the peculiar characteristics of different theories in one's efforts to make sharp, clean-cut distinctions among them. A thoughtful reader is always likely to raise the question whether the writer "has not somewhat exaggerated the difference between his own position and that of his predecessors; whether the sharp contrasts which he finds between the doctrines of different schools really existed, and whether these doctrines were generally as fragmentary and one-sided as he thinks." (Marshall, Principles of Economics, on Boehm-Bawerk's Capital and Interest.) Of course, the present writer has tried to avoid this pitfall, but can have no great confidence that he has succeeded.

As we have seen in the preceding chapter, the real heart of the problem suggested by the mere existence of the state is this question, "What is the ultimate human prerogative on which the state is built?" In considering actual and possible answers to this question, we will first divide them into two

general classes, according as they start with a prerogative which is purely *subjective*, *i. e.*, of the individual over himself, or *objective*, *i. e.*, of some person or persons over other persons. (The full scheme of classification is exhibited in the table on page 54.)

The first division—the *Subjective Prerogative Group*—is constituted by the various forms of the *Contract* theory. I call these *subjective* because they all start with the assumption that among men, as being substantially equal, only self-government is morally justifiable, that any objective interference with the free self-determination of the individual by one of his fellows is *per se* unjust. From this premise, evidently, government can be brought into existence, if at all, only by some process of consent on the part of the governed.

The untenableness of this theory, whatever be the particular form it takes, has been so often demonstrated that there is no need of detailed treatment here. A single objection is absolutely decisive. The consenting act, if ever so real, could never bring into being a true political authority. For, since it is possible that the original constitutive compact, like any other contract, should be broken, therefore the right of the state to enforce law must, in the last analysis, mean the right to enforce the original compact. But, since the right to enforce the original compact can not itself be created by that compact, therefore that right must exist prior to the compact. To make this theory effective, therefore, it would be necessary to assume that at least one objective right, one right of external control over the free will of the individual, exists prior to his consent. But this, of course, is to deny the fundamental postulate on which the theory is built, viz., that all interference with individual freedom, unless consented to, is

unjust, immoral. There is, therefore, no prerogative in the exercise of which the original compact can be enforced; and so, after all our trouble, we are left without any state.

CHAPTER II.

II. OBJECTIVE PREROGATIVE GROUP.

A. Private or Egoistic Prerogative Sub-Group.

(1) Right of Redress. (2) Right of Self-Preservation

On the contract theory, as we have seen, political authority could never come into existence, because that theory starts with an authority which is purely subjective, *i. e.*, of self over self, while political authority is nothing if not objective, *i. e.*, of one over others; and between the absolutely subjective and the absolutely objective, there is an impassable gulf. All other theories avoid this difficulty by taking for their starting-point some prerogative which is already objective, *i. e.*, *a right belonging to some person or persons to interfere with the liberty of some other person or persons.* These theories are divided into two sub-groups, viz., the Egoistic Prerogative and the Altruistic Prerogative. To the first belong those theories which assert that the prerogative of the state originates in some prerogative of a private or personal character—some right belonging to one person actively to regulate the conduct of other persons *with reference to some end of his own.*

(1) Right of Redress.—The first theory of this class which we consider, asserts that the ultimate right out of which political prerogative grows, is the *right of redress* belonging to the injured party as such. This right being transferred to

the community at large, full political authority is thereby brought in existence. This theory seemed implied in Godwin's criticism of the contract theory current in his day: "There is, therefore, no delegation necessary on the part of the offender; but the community in the censure it exercises over him *stands in the place of the injured party.*" (Godwin, Polit. Justice, Vol. I, p. 161.) This theory is not usually recognized in the formal discussions of our subject; but it has, I believe, a very considerable following among intelligent men. It seems to be implied in this sentence from the New York *Nation* of March 1, 1888: "The pardoning power does not rest with me; I have transferred it to the society in which I live." Yet, however common this view may be, it will not bear careful examination. For, first, the right exercised by the community is not one of redress. The injured party and all connected with him may have been long dead; but the state no less remorselessly hunts to the death his slayer. The state punishes, but punishes that rights may be *secured*, not that their violation may be redressed. In the second place, the right of redress, if there be such a right, is essentially a private, non-transferable right. If I have wronged you, you can forgive me, but no one else can, either originally or by delegation from you. Finally, political authority can never depend for its title on any process of delegation. For the state is a compulsory organization. The government assumes to redress the wrongs of a private citizen, not because that citizen has favored or consented to this arrangement, but because the state believes that justice will best be secured by such action. And, if Virginia, Mississippi, and other Southern states, alluded to in the *Nation's* article, ever set about the task of abolishing the appeal to knife or pistol so common in

those states, it will be, not because men have agreed to relinquish the sweets of revenge, but because those in the community who believe such course the only just one, have become strong enough to enforce their will on the rest.

(2) *Right of Self-Preservation.*—A second theory which attempts to establish the state on the basis of a private, particular right finds the ultimate prerogative in the right of self-preservation. Men everywhere have a primordial right to take the necessary steps to secure their own preservation, even if this involves restraining the personal liberty of others. Now, since crime threatens the welfare of all the members of the community, therefore the community, in the exercise of the original right of self-preservation, may justly restrain crime by whatever means may be necessary. To this theory one objection seems decisive. The right exercised by the state can not be the right of self-preservation. To prove this we simply need to reflect that the intensity of the right of self-preservation in any particular person varies directly as the proximity of that person to the danger; while, with the political prerogative, the case is exactly reversed. Those persons whose interests are most immediately threatened by a possible repetition of the criminal act are, as all agree, just the persons to whom the political prerogative does not belong. Rather does it belong to those who are least interested and, therefore, most nearly impartial. This fact makes it clear that the political prerogative is a right, not to protect or preserve one's self, but to enforce justice as such. Of course this is not to assert that self-preservation has no part in justifying the human exercise of coercive authority. On the contrary, it is probably quite indispensable to the accomplishment of that task. But the mere right of self-preservation can not be the ultimate basis of

the state's prerogative; for that prerogative is a far higher one, viz., the prerogative of maintaining justice, of seeing that right triumph though the heavens fall.

CHAPTER III.

II.—B. Altruistic Prerogative Sub-Group. *a.* PARTICULAR ALTRUISTIC PREROGATIVE.

(1) Prerogative of Patrons. (2) Prerogative of the Strong.

In reference to all possible theories of the class considered in the preceding chapter, viz.: the Private Prerogative Sub-Group, it might have been seen from their very definition that they could not be accepted; since, as we have seen, the political prerogative, having as its end the maintenance of universal justice, must be in its very nature impersonal, non-private, non-egoistic. Every private right, so far from making a possible basis for political authority, tends just by its particularistic character to neutralize whatever truly judicial or political prerogative man does possess. We must, therefore, seek a prerogative which does not point toward self. This gives us the Altruistic Prerogative Sub-Group. Prerogatives of this class again subdivide into *a.* The *Particular Altruistic Prerogatives—i. e.* prerogatives of one over others specially related to himself, and *b*, the *General Altruistic Prerogatives—i. e.* prerogatives of one over others in general. We here consider class *a.*

(1) The theory of this class most sharply distinguished is that which attributes the ultimate basal prerogative to *Patrons over Dependents*, as the father over his family, or the medieval

lord over those looking to him for protection. It is not easy to determine with certainty the exact core of this doctrine. It may have any one of three different meanings. 1. It may mean that the right to exercise authority in the name of justice is merely an evolution out of a purely private claim which the father or patron might be supposed to have,—a claim to control the conduct of those dependent upon him, simply because he has performed for them a service, and so placed them under obligations to himself. In this case the theory plainly belongs under the preceding head as a mere Private Prerogative theory, and is shown to be inadequate by the reasoning employed in the preceding chapter. 2. The doctrine may mean that political authority is an evolution from the right of wardship naturally belonging to the father or patron. 3. Finally, the doctrine might mean that, though the political prerogatives is naturally independent of the prerogative of wardship, yet the two are necessarily connected in the same person.

As the theory according to the first interpretation is disposed of in the same way as other private prerogative theories, we need not consider it further. The *second* form of the doctrine—that political prerogative is a mere evolution of the prerogative of wardship—would seem to be sufficiently refuted by a comparison of the two prerogatives. The right of wardship is a right to control the action of a particular person in order to attain some good *of that person.* The political prerogative, on the other hand, is a right to control some persons in order that the good or right *of persons in general* shall be secured. The two prerogatives are therefore always clearly distinguishable, even when they are both involved in the same act. Thus, in so far as a particular punishment is inflicted, that the child or ward may be profited, it is the prerogative

of wardship which is exercised; while, in so far as the purpose of the infliction is to insure just action on the part of the person punished toward other persons in general, it is the political prerogative which is exercised. It is also possible that the duties growing out of the two prerogatives may be in conflict. The duty of a man as a father or patron may conflict with his duty as a ruler. It is therefore plainly impossible that the political prerogative should be an evolution from the wardship prerogative.

But we still need to reckon with the *third* interpretation of this doctrine. Perhaps it means that, while the wardship prerogative and the political prerogative are logically separable, yet the two are necessarily associated—the patron *per se* must also be the ruler. Now, as a mere empirical rule of frequent application in the course of history, most persons would be disposed to admit that this proposition has some force. It will quite probably turn out, when we have found the true ultimate prerogative, that it will prove to be one which, at certain stages of social development, belongs in its highest form to the patron. But, of course, the theory here considered, in order to furnish a solution to our problem, must assert, not the mere occassional connection of the prerogatives of wardship and of rule, but rather the permanent and *metaphysically necessary* connection of the two. If patronage *per se* is the ethical basis of political prerogative, then *only* the patron could ever have a rationally valid claim to exercise authority. The theory, therefore, would necessarily fail to provide any state among men substantially equal, or where the relations of patronage and dependence did not exist. This objection, plainly, is equally decisive against every form of the doctrine.

(2) Closely allied to the last theory, often identified with it, is that which attributes the ultimate, constitutive prerogative to *the strong as such.* This, again, is open to different interpretations. 1. It may mean that, *other things being equal,* the strongest has the supreme claim to rule. In this sense the proposition is not likely to arouse much controversy. But it would also have no significance as a solution of the problem before us. Some of the "other things" might easily be that real ethical basis of political authority which we are seeking. 2. But, again, the theory might mean, is commonly understood to mean, that *might makes right*—that strength *per se* is the warrant which justifies a man in imposing his version of the jural order on his fellows. Thus understood, the theory is definite and tangible, but it simply has no possibility of acceptance. *Undifferentiated might as such can not be the basis of right as such.* There is plainly no rational, causal nexus between them, and experience has shown too clearly that might is often devoted to arbitrary, capricious, unregulated will.

CHAPTER IV.

II. B.—*b.* General Altruistic Prerogative. *a**. SPECIAL DIVINE COMMISSION.

(1) Immediate. (2) Transmitted. (3) Providential.

We have now considered the theory which starts with a purely subjective prerogative, *i. e.*, of self over self, and attempts to bring into being political authority by the process of relinquishing this prerogative to a common sovereign. We have seen that any such attempt is doomed to failure; that the purely subjective would necessarily remain such; that, consequently, the state must take its start from an *objective* prerogative. Further, we have considered those theories which try to meet this necessity by building upon a prerogative which is objective, indeed, but *private, personal, egoistic.* We have found that such theories also fail to furnish an adequate basis for political authority; that, in fact, such private, personal rights only tend to neutralize the true political prerogative, whatever that be. It was thus made evident that the adequate basal prerogative must be an *altruistic* prerogative. But, again, we saw that not all altruistic prerogatives will answer. *Particular* altruistic prerogatives, *i. e.*, such as exist because of some special relations between ruler and ruled, such as patronage, or support, or physical superiority, will not answer to furnish the universal basis of the state, for then there could be no political authority among persons who did not realize

any of these relations,—that is, there could be no state among equals. It is, therefore, plain that we must set out with a prerogative which is in its very nature general, universal, public,—a right to restrain persons in general in the interests of justice; a prerogative of some objective person or persons to punish the wrong-doer, because he is a wrong-doer, and not because of some peculiar relation between himself and the executor of the punishment. The theories remaining to be considered all attempt to meet this requirement by starting with a *General* Altruistic Prerogative. These theories subdivide into two classes according as the prerogative with which they start comes as a *special commission* from God, or is *naturally* in the hands of man. The first class are no longer of great importance, but will be briefly considered in this chapter for the sake of completeness.

a. Special Divine Commission.*—The general basis of these theories is the supposed principle that neither the rational nature of things, nor God, *in and through nature*, has given man any commission to rule his fellows, that, therefore, if there is to be any warranted political authority, it must exist by special commission from God. Historically the theory has appeared in three chief forms.

(1) According to the *first*,—*Immediate Divine Commission*,—no one could justly rule except as Gideon or Samuel are represented to have ruled, *i. e.*, by a specific call from God to that function. Of course this theory does not call for discussion as it has no following in our day.

(2) The *second* form of the theory, which taught that the divine commission might be *transmitted* from the original recipient down a continuous line of posterity, and even over some very astonishing leaps, was the doctrine of Filmer's Pat-

riarcha. Leslie Stephens justly remarks that it does not deserve serious refutation.

(3) *Providential Commission.*—This form of the theory is somewhat more important. It has without doubt a considerable following in monarchial countries. It seems to be almost a family doctrine among recent Hohenzollerns. Some passages from Stahl seem to indicate that this is the true interpretation of his theocratic doctrine. But, however respectable, it must be rejected as inadequate. Of course this is not to say that we must deny the theistic doctrine of an immanent Providence controlling the affairs of men, and even determining the person who shall exercise supreme authority. But, if the theory here considered is to furnish a solution for our problem, it must mean more than a mere assent to the doctrine of divine providence; it must mean that endorsement or acceptance by Providence is *the sole basis* of legitimacy; because to find this sole basis of legitimacy is exactly our problem. According to the theory, then, all free acts of human persons leading toward the establishment of government are unjustifiable, illegitimate, and become legitimized only when they have been endorsed by Providence. This is to say, that God has so constituted this world that a most important and essential function in human society can be accomplished only through a series of *rationally illegitimate actions* on the part of individual men;—a proposition, certainly, which must shake one's faith in the soundness of a premise from which it necessarily follows. But a second and decisive objection is this, that the appeal to Providence can never have any value in this or any other case where the question is one of *ethical justification.* By God's providence, active or permissive, exist all the facts of human society, alike the evil and the good. Pro-

vidence, therefore, can never be an adequate authority as to the validity of a title or the legitimacy of an act. It seems to justify everything; it, therefore, justifies nothing.

CHAPTER V.

II. B. *b. b.** Natural Human Commission. *a.*** COLLECTIVIST HUMAN PREROGATIVE.

(1) Society. (2) The People. (3) The Community (Nation). (4) The State.

At the beginning of the last chapter we summarized the results of the preceding critique, and found ourselves brought to the necessity of setting out with a prerogative which is in its very nature just such as the prerogative of the state, viz.: a prerogative exercised in the interest of justice over men in general. We then proceeded to consider the theories which, if true, certainly would meet this requirement, viz.: the theories which set out with a commission given by God himself to some special person to act as his vicegerent in the exercise of authority to maintain justice in human society. Since, however, we found those theories, for other reasons, untenable, we must pass on to the theories of the remaining group,—theories which all agree in asserting that somewhere among men there is to be found a NATURAL prerogative to exercise restraint upon men in general in the interest of justice. In asserting the naturalness of this prerogative it is not intended to decide the controversy as to whether the right is determined ultimately by the nature of things or by the will of God; but only that, even if the latter be the case, that will is embedded in the nature of men and circumstances, and no special commission other than that revealed in such nature is needed by man.

But the Natural Prerogative theories soon break sharply apart. On the one side,—and this is the drift of current discussion, — we find the ultimate constitutive prerogative attributed to some *collective* manifestation of humanity, as society or the people. On the other, there is a possibility of starting with the individual and asserting that in so far as we attribute prerogative to society it must be thought as a *distributive* rather than a collective conception. To the first group, for want of a better name, I have applied the term *Collectivist*, using the word, of course, in a sense quite different from that common in socialistic discussion. This group we will now proceed to consider, distinguishing four particular theories as more or less clearly taught by various writers.

(1) *Society.*—The first of these theories attributes to *Society* the primordial right to restrain the liberty of persons in the interests of justice. "Society does not wait for the individual's consent; for society has a natural, original right to control the individual. Without delegation from any authority whatsoever, society is sovereign." This method of deriving political authority is apparently quite common among American and English writers. As we are accustomed to use the term society, it is a fairly plausible view. Bluntschli's characterization of society as "only the sum of individual men" will hardly answer among us. We think of society as implying relations and *ordered* relations and even a *system* of ordered relations. Society is no mere homogeneous mass, no mere pile of uniform atoms. Even in the least important uses of the term, even when it means the shifting associations of persons devoted to getting pleasure in intercourse with one another, even then there is present the idea of a rational whole, a thought totality constituted by these persons. When people

say "Society requires such and such a course," they do not mean that Mrs. Jones and Mrs. Smith and Mrs. Green require it; but, rather, that the maintenance of a certain system or order or set of relations, which all find in the long run advantageous, requires such conduct. So, when we use society in the largest sense, we mean not the mere mass of human beings present in any community, but rather the totality of ordered relations which we find embodied in each community. To affirm the sovereignty of this great entity is by no means so unreasonable as it is sometimes painted. Still it will not answer. Society is only an abstract or thought totality. It has no reason, no will, no personality, not even the figurative personality of the state. Society, therefore, cannot be the subject of rights or prerogatives; for these can inhere only in a concrete person. Thus the ultimate prerogative on which the state rests cannot be a prerogative of *society* as such.

(2) *The People.*—A second form of collectivism sets up *the people* as possessing the ultimate prerogative. This doctrine is capable of at least two different interpretations according as we mean by the people, the historic community, or, on the other hand, the mere mass of undifferentiated citizens. In the former sense the doctrine is considered in the next paragraph. Here, we will understand by "the people" *the mass of citizens in general.* Thus understood, the doctrine is liable to an objection similar to that which shuts out society as the possessor of the ultimate political prerogative. The people is, indeed, a more concrete conception than society. It is made up of persons rather than relations. But it has no unity. It is not a person. It has no will, no judgment, no reason. It cannot, therefore, be the subject or the source of rights.

(3). *The Community.* (The People. German *Nation.*) The third Collectivist theory professes to find the ultimate constructive prerogative on which the state is built in *the community, i. e.,* the people thought of as a totality bound together by common origin, language, literature, moral ideals, etc., etc. This is doubtless a better candidate than any of its predecessors. But it will not answer, after all. Real and natural as is the unity of such a community, it does not attain to the status of a person. In truth, the very purpose of organization into a state is to lift the community up to the condition of a political person; and, even then, it is only "a sort of person." It is indeed not uncommon in our day to talk about the general will as if the community possessed a literal concrete will. But of course this is a mere figure of speech. The general will means merely the more or less definite purpose, common to a great mass of individuals dwelling in a community, to have realized a particular ideal of the absolute right. That general will is in no sense a real will, that is, a capacity to determine one's self to action with reference to a contemplated end. To the community, therefore, as the claimant of the basal prerogative, applies the same objection as to society and to the people understood as the mere undifferentiated mass of individuals. It is not a real person; it cannot, strictly speaking, be the possessor of any prerogative whatever.

(4). *The State.* The writer has felt considerable hesitation in attributing to any one the theory that the original constitutive political prerogative belongs to the state as such; but something sounding much like this seems to be quite generally advocated by recent German writers. On its face it seems a meaningless paradox. To use a graphic metaphor, it seems

to attribute to the state the power to lift itself by its boot straps. Evidently the very thing to be explained is the existence of the state; and to say that the ultimate political prerogative belongs to the state, is to say that the state possesses the prerogative of bringing itself into existence. The only method of making this suppositious doctrine mean anything is to understand it in something like this form.. If we suppose the established order overthrown by violence, and a purely artificial regime of force established in its stead, then we must look upon that regime as having no rational justification, until, through the gradual inter-working of the manifold forces involved, such as divine providence, general acquiescence, the formation of new habitudes adapted to the new order, etc., a new, settled, smoothly-working order has been evolved; at which time the true state may be said once more to have come to life, to have risen, like the phenix, from its own ashes. Then, and then only, when the new powers have become the duly accredited organs of this revived state, can they be said to have any warrant. It must not be imagined, however, that this new legitimacy has been gained through the acquiescence of providence, or of the people, or of the community; since the writers in question distinctly reject all these doctrines. The active participants in such a legitimated government have gained their commission simply from the state considered as a totality. Every act they performed, before a state from which they could get such commission had come into existence, was a rationally unwarranted act, a rationally illegitimate act. Such a theory would seem to need no further refutation than its own clear statement. The action of certain persons is necessary to bring into being a state, and yet, only from the commission of the state thus being constructed can any true

legitimacy come. We are thus brought to the insoluble contradiction that only illegitimate action can bring forth legitimacy; only thistles can produce figs.

With reference to this whole class of theories it is to be remarked that there is a fundamental absurdity in the very idea of a collectivist ethical basis for political authority. All collective activity of man is made possible not by the coalescence but by the concurrence of individual, personal wills,—*i. e.*, persons, acting individually, freely join their forces for the attainment of a common end. But, if these persons act individually, they must be responsible as individuals, and, if responsible as individuals, then of course, *as individuals* they must be possessed of the prerogative in the collective exercise of which they concur. We are therefore forced to the conclusion that, if a *natural political* prerogative is to be found anywhere, it is in the *individual* man. This is in general terms the thesis which will be stated and defended in Part III.

PART III.

THE PROPOSED SOLUTION.

CHAPTER I.

THE THEORY STATED AND EXPLAINED.

By the preceding critique we have been brought to the conclusion that, if there is any ultimate prerogative on which the state can be built, it belongs to man as man. Part Third is given to the exposition and defense of this doctrine. In this chapter we will limit ourselves to the statement and explanation of the theory.

A. Statement of the Theory.

The form in which the theory will be maintained is to be found in the following four-fold thesis.

1. To every person as such belongs the prerogative of rule, *i. e.*, the prerogative of coercively interfering with the liberty of other persons in order to maintain the first person's version of the jural ideal; and

2. Among any number of persons, while each possesses the general prerogative of rule, *sovereignty, or the prerogative of exercising final authority*, belongs of right to the person or persons who show themselves fittest to exercise such authority; and

3. Since persons acting collectively, *i. e.*, in association with one another, are manifestly better fitted to exercise authority than when acting individually, therefore, it is the duty of each person to exercise his prerogative of rule collectively, and, so, it is within the prerogative of other persons

to compel him so to act, if compulsion be necessary; that is, the prerogative of associated man is higher than that of man acting in isolation; and, finally,

4. Since the whole community, *i. e.*, man in general, is evidently better fitted for this task than any other association of men, therefore the prerogative of men acting in communities is the highest of all possible human prerogatives. The community therefore is justified in assuming and exercising final authority in the name of justice.

B. COMMENTS ON THE THEORY.

Let us now proceed to interpret this thesis in detail, and, in so interpreting it, to anticipate some of the most immediate objections. In the *first* place, it should be noted that this theory, if in a sense a kind of individualism, is such in a totally different sense from that in which the term is applied to the subjective doctrine of consent or to the theories which start with purely private rights like redress, or self-preservation. The doctrine here presented builds on the individual, indeed, but on the individual as a *person*, a being possessed of a rational will, capable of self-determination in accord with moral ideals. The exact difference can best be brought to light by contrasting two or three different hypotheses. Let us conceive the individual person with all stress on *individual;* the person as a center of mere arbitrary will, a mere fountain of unregulated spontaneity. To attribute prerogative to such an one would be to enthrone wanton caprice. At the opposite pole, let us conceive the absolute jural order, the ultimate basal ideal on which all rests. To attribute prerogative to this is to enthrone a mere abstraction. The first is sufficiently concrete but has no universality. The second is univer-

sal but has no concreteness. Where is the middle term to be found? The theory here advanced answers;—The true middle term is *the actual man*, at once concrete *and* universal, having a concrete will wedded to universal reason; man, who is a real, though imperfect, incarnation of the absolute and eternal order of right. It is therefore, not because man can will, that he rightly exercises authority, but because, and in so far as, he can will *rationally, impersonally, impartially.*

In the second place, it should be noted that, though the theory gets around to the sovereignty of the community, this is in a quite different sense from the Collectivist form of that doctrine. In fact the antithesis between them is almost complete. Collectivism, so far as it recognizes any prerogative in the individual, attributes this to him as a member of the concrete organism, from which he holds a sort of commission. The theory here advanced reverses the case and asserts that if the community, conceived as a corporate whole, possesses any political prerogative, it is because, and in so far as, that community, through its being constituted of and by individual persons, itself attains to the status of a free and rational person. It is because the state is man "*writ large*," that it possesses any claim to authority. But, in fact, the difference is still deeper than this. The doctrine of the thesis treats the community distributively not collectively. It is not the community as a corporate whole that can be thought of as the possessor of the basal prerogative; for, thus conceived, it is not a person nor the subject of rights. In reality it is the prerogative of *men acting in and through communities* upon which we build the state.

But this suggests still another comment. This theory does not teach that the prerogative of the state is created out of

that of the individual by any process of delegation. The basal prerogative is universal; but all prerogatives are not of equal rank. On the contrary they are of every degree of elevation. Under normal conditions the prerogative of men acting in and through the state is the highest and, so, the superseding prerogative. But the individual's prerogative acting in other relations or even singly is only suspended; it is not destroyed, any more than the stars have ceased to shine because the full light of the sun has made them invisible.

Again, it may be desirable to guard against the impression that this thesis involves of necessity the assertion of popular sovereignty. On the contrary, the theory largely grew out of a desire to find a doctrine to justify the current latitudiarianism which holds that any and every form of government is legitimate in its own time and place. The theory here advocated seems to meet this case; for, while it asserts the universality of the prerogative of rule, it limits the possession of the sovereign prerogative to the fittest. In one age that may mean a very small minority which has come to full political consciousness; in another age, a much larger number; in a still different time and place, the whole people.

Still, again, it may occur to the reader familiar with political speculation that this theory is a mere reappearance of the Socratic doctrine of the sovereignty of the fittest.[1] In rejoinder to this at least two things are to be said. In the first place, if we suppose Socrates to have consciously addressed to himself the question propounded in this paper "On what ultimate prerogative does the state rest," he certainly nowhere systematically treats it or develops the doctrine of the fittest from

[1] See Sidgwick's Methods of Ethics, p. 270.

the bottom up. The very foundation principle of the theory, the assertion of the *universality* of the governing prerogative, which latter does not originate in the fittest but merely takes on its highest or sovereign manifestation in him,—this, so far as I know, is nowhere even hinted at. But, in the second place, it is, to say the least, very questionable whether the doctrine of Socrates was even by implication an answer to our question, very doubtful whether he ever consciously presented to himself the question. His problem seems to have been rather the purely empirical, practical one, "Given the state, who has the best claim to be its mouth-piece, to voice its will." Of course his answer is "The fittest."

But, again, it may be said that this assertion of the sovereign prerogative for the fittest is getting around to the position of those who, like Carlyle, attribute the right to rule to *the strong* as such. But this is not true. There is no doubt a close affiliation of the doctrines; but there is also a decided difference. Whatever such writers intend to imply, they at least seem to assert that strength is the only basis or requisite of authority,—that undifferentiated might as such make right. Perhaps it would not be far out of the way to affirm that at bottom they are only emphasizing one side somewhat unduly, that they do not mean to omit from the necessary conditions of prerogative the possession of reason, moral ideals, a just understanding, etc. But in passing judgment on any theory we have to consider not what men possibly may mean, else we would probably all be of one mind, but rather what they say. They alone are responsible for the emphasis. They have elected to stand or fall by their own statement of the case. The writers referred to, substantially assert that might makes right. In contrast with their theory the doctrine here ad-

vanced builds on the universal rationality of man. It makes its central foundation stone, not strength, but reason. It is primarily because man is at once a particular and a universal, because he is a living incarnation of absolute reason, of the eternal order of right, that he is fitted to be the middle term between that absolute order and a concrete order of right. But this theory does not deny the necessity of might to the true sovereign. It merely tries to put this particular element into its proper place as one of the essential factors which go to make up fitness, but by no means the only one, nor that one which is the primary basis of man's prerogative to rule.

This is also the place to remark on the element of truth in the theory of Patrons and Dependents. As we have seen, the relation of patronage cannot be the real ethical basis of the political authority; since, in that case, no political authority could rightly be exercised where such relation does not exist. But, if we assert that political prerogative is universal, belonging to man as man, and that the highest prerogative belongs to the *fittest* man, then we can admit that, *practically under certain empirical conditions*, sovereignty, or supreme political authority, does belong to the patron as being just this fittest man. For, surely, his fellows, who by hypothesis are so inferior as to be obliged to live in a state of dependence, are presumably fit only for the place of subject never for that of ruler. But, of course, in saying this, it is assumed that the inferiority in question is natural, *i. e.*, is the result of natural endowment or of history, and is not caused by any intentional adaptation of the social order to produce such inequality. Purposely to keep men shackled by ignorance and dependence, in order that they may be unfit for the task of government, is palpably immoral.

CHAPTER II.

THE DIRECT ARGUMENT FOR THE THEORY.

A The First Clause of the Thesis Maintained.

Let us now take up the defense of the thesis clause by clause. "To every person as such belongs the prerogative of rule, *i. e.*, the prerogative of coercively interfering with the liberty of other persons in order to maintain the first person's version of the jural ideal." This proposition is evidently the foundation of the whole theory, and it is probably the only portion which would arouse serious controversy. Some of the surface objections, *e. g.*, that it enthrones the abstract individual will, or that it excludes all forms of government other than popular sovereignty, etc., have already been met by the mere exposition of the thesis presented in the preceding chapter. I shall therefore, now undertake the positive argument for the proposition, starting from the Anarchist's stand-point, questioning the propriety or justifiableness of any authority whatever. In doing this let us break up the proposition into two questions. (1). Can we justify coercive restraint of the the individual, where no question arises as to the correctness of the jural ideal which it is sought to impose on him, *i. e.*, on the hypothesis that the opinions of all men are alike as to the requirements of justice; so that the person restrained has himself assented to the truth of the particular version of the ideal in accord with which he is restrained? (2). Can we justify such coercive restraint, where the coercing individual must

impose his version of the absolute order, an ideal not necessarily common to himself and the person coerced, an ideal possibly rejected by that person?

(1) The first question need not delay us long. As we saw earlier in this discussion (p. 39), the right of free self-determination, though a very real and central right, is after all only a member in an order of right, and, through that order of right in turn, is a part of the all-dominating, all-harmonizing moral order. Thus existing, it has no claim to recognition except through that order. A person, therefore, who, by violating a right which forms a part of the general jural order, thus makes war upon that order, cannot rationally claim the benefit of its provisions. He has cut out the ground from under his own feet. I would by no means go the length of Hegel in representing punishment as a process which with metaphysical, almost mathematical, exactness restores the broken order. The case is simply that the act of criminal violence has introduced into the totality of circumstances which condition and determine the jural order, a new and disturbing element. This fact brings into existence a different right, a right determined by the new conditions. One constituent of that new right is this, that the person acting against right, at war with right, has forfeited his claim to be considered primarily as a person, as a center of rights. I say primarily, for I do not conceive that the forfeiture is absolute. He is still a person; but he has made himself liable to be treated primarily as a means, not an end. He has made it legitimate to sacrifice him to the system, instead of considering him as an end for which that system exists. Or still more exactly, he has forfeited his right to be considered as one of the ends of that system. It is still to be administered as a

means, but as a means to the ends of *persons in general*, excluding himself. And this shows the true place of the theory of *the social good* as the basis of the punitive right. This latter doctrine does not furnish the primary ground of just punishment, for, as Hegel says, it does not go deep enough. Merely to secure its advantage, the community has no more right to violate the sanctity of personality than the criminal had. The *primary* justification of punishment we must find in the moral relations of the criminal himself. This we have done by asserting what might be called the *theory of forfeiture*. But this is merely a negative justification. The doctrine of the social good furnishes its positive correlate. That is, since the order which has been violated exists for the good of *persons*, and since, consequently, the criminal act brings *injury to persons*, and so results in *material*, as well as *formal* evil, therefore, if suffering brought on the doer of wrong can in any degree mitigate or diminish the evil flowing from his act, such suffering may be justly inflicted. *In a word, the criminal is justly punished, not because he is guilty, merely, nor because the welfare of society demands it, merely; but because both of these concur.*

But, now, if it be conceded that the criminal has, by violating an order of right which he with all others looks upon as binding, forfeited his right to be considered primarily as one of the absolute ends for which that order exists; if his claims to free self-determination may justly be sacrificed to the good of other persons who have not forfeited their claim to be true ends in themselves, it scarcely needs to be argued that he cannot protest against the *person* of the particular executor who brings upon him the natural and necessary consequences of his wrong. He is *outlawed* from the absolute jural and moral

order to which by hypothesis he has himself assented. He can have nothing to say against the claim of any and every one to take up the rod and ax. In his self-adjudged guilt, his self-imposed sentence, he must say, "Every man's hand will be against me." We do not, therefore, hesitate to affirm that the first question is certainly answered in the affirmative; that, *on the supposition of a universally accepted ideal*, an ideal unquestioned even by those who violate it, *adequate prerogative coercively to maintain that ideal belongs to every person.*

(2) But we have still to establish the adequacy of the prerogative belonging to every person as such coercively to interfere with the liberty of his fellow in order to maintain, not a universally accepted ideal, but *the ideal of the person exercising the coercion.* This proposition presents much more serious difficulties, and it has undoubtedly been the fundamental ground of the anarchic objection to the authority of the state. It may help in the matter to consider exactly where the difficulty lies. It is not in the fact that the version of the jural ideal enforced is that of the person enforcing it. For, of course, his own version is the only one which he could under any circumstances justly maintain. Thus, let us suppose more than one version, even contradictory versions. Let us suppose, again, that A has violated the order of right as he understands it, but not as B understands it. Can B justly proceed to punish A under A's own sentence? Surely not. He cannot but look on A as a mad man, as one who is unable to discriminate the right and wrong. He could no more inflict on A the punishment to which A considered himself justly liable than he could justifiably hang an insane person who confidently but erroneously represented himself as a murderer. The real difficulty in the new hypothesis is deeper. It grows out of the

fact that, since there is controversy as to the true ideal, the one enforced *may be a mistaken one.* The question, then, resolves itself into this: has every person as such adequate prerogative to enforce upon others an ideal which his judgment approves but which may be a mistaken ideal?

In maintaining the affirmative of this question we need to remind ourselves as to exactly what is meant by an adequate prerogative under the actual conditions of human society. As we saw in the very first chapter of this essay (pp. 18-19), under actual conditions, a prerogative does not necessarily have an exactly correlated obligation. A's prerogative to rule B has no exactly corresponding obligation in B to obey; for no one can ever be under obligations to obey anything but his own ideal of right. The early church recognized the prerogative of Nero to rule but at the same time insisted on the obligation of the Christian to obey God rather than man. In maintaining the proposition that the individual has the right coercively to restrain his fellow in order to maintain his own ideal of justice, we shall mean, then, that the claim of the individual thus to act is so stamped in the nature and relations of things, that he can plead it as adequate warrant before the bar of reason, before the bar of the Absolute Judge. Is the proposition, when thus interpreted, true?

Let us get before us the data of the problem. To begin with, here is the irreducible fact of human society, of beings living together in such fashion that the maintenance of rights is absolutely essential to the realization of personality, while the maintenance of these rights, as all history shows, is not possible without interference with the free self-determination of individuals. For, of course, men do not universally, or even usually. freely choose to act in accord with the law of right. Even

with strong governments to effect their suppression, crimes are frequent; and history shows that, where authority is weak or in abeyance, disorder and violence make human life scarcely tolerable. It is indeed argued by some enthusiasts among us that the removal of social and industrial inequalities would remove the motives of crime, hence would remove crime, and, so, the need of machinery to guard against it. But, while such changes in the external condition of men would probably do much to diminish crime, the sober thinker would scarcely admit that its utter suppression is possible without a radical change in human nature rather than in its conditions. It is a common-place of history, remarked so long ago as Aristotle's time, that often the most henious violations of rights are committed by those who are apparently enjoying the satisfaction of every want. Indeed, were there no danger of any other crime, it is certain that society, even in the utopian era, would find itself obliged to punish at least the crime of striving to lift one's self out of the tedious equality which is to be the great desideratum of that epoch. In any case it is evident that governments *have been* and *are now indispensable.*

But, in the second place, while government is thus indispensable, while there can be no doubt that the maintenance of a jural order requires and will require interference with the free self-determination of individuals, it is also evident that the version of the jural order which, through the agency of government, is thus imposed on men in general cannot be the particular version to which every individual has assented. This would mean, in minor particulars at least, as many versions as there are persons. It is evident that the governing process, the process of maintaining the jural ideal, must involve the process of issuing an authoritative verson of that ideal.

Further, this authoritative version plainly must be that of the person undertaking its maintenance; since it would certainly be immoral for him to enforce an ideal in which he did not believe.

Combining these various considerations, it follows of necessity that to the existence of society, to the maintenance of the jural order, it is absolutely indispensable that the political prerogative, *i. e.*, the prerogative of coercively interfering with the free self-determination of individuals in order to impose upon those individuals a version of the jural ideal emanating from the executor, should somewhere exist.

This is one side of the shield. What now have we on the other? Where could that empirically necessary political prerogative be found? In the first place we are certain that it must be somewhere among men. For, plainly, so far as government is concerned, man is left to his own devices. There exists on earth no being of a superior order to whom, because of his superiority, men are naturally bound to render obedience.[1] But, further, not only are we constrained to look for this political prerogative among men, we also must find it, if anywhere, in the individual man; for, as we have already seen, no conception of humanity taken collectively offers the necessary concrete personality to which the primordial prerogative can be attributed.

Being thus shut up to the one candidate—the individual man—we now ask, What marks of fitness, what qualifications, what warrant can this only possible candidate show for himself? In the first place, he is a person; he is possessed of a rational,

[1] Were there is such an one, it is admitted that the assumption of authority by man himself would be without justification? (cf. Aristotle's Politics, Bk. III, Chap. 13).

moral will; he is a real, though imperfect, incarnation of the absolute reason; in spite of many slips and many aberrations, he yet tends in the long run to will in accord with the rational ideal. Thus endowed, thus constituted, man is fitted for the first part of the task laid upon him, viz., to determine, approximately at least, the truely binding version of the jural ideal. In the second place, man, thus fitted by the possession of a rational nature to act as the legislator, has, in his understanding, the endowment which enables him to perform the functions of the judge. It may, indeed, be objected that the elements of rationality in man furnish inadequate warrant because adulterated with elements of particularity, *i. e.*, with personal interest, or prejudice, or passion. This does undoubtedly furnish a very serious objection to the attribution of prerogative to the person or persons immediately concerned in any particular violation of rights. It is, further, a decisive objection to basing political authority on the alleged right of redress or the right of self-preservation. For, in truth, in so far as the community are deeply interested in the maintenance of a particular principle, and are unable to lift themselves above that particular interest to consider the case impersonally, to just that extent are they unfitted for, and, so, unwarranted in, playing the part of the judge. But all experience shows that men are able to act with reference to crimes which affect themselves only through the danger to the general social order in substantially impersonal fashion. Indeed, it is usually difficult to secure anything like a due amount of interest in that which concerns all only as each is injured by the wrong to the whole. We must therefore affirm that man's fitness to act as the judge, though imperfect, is under the actual conditions substantially adequate. But, finally, while it is thus

evident that man possesses natural fitness for the offices of legislator and judge, it is further evident that he is made competent to the task of executor through the possession of a physical organism which enables him to bring his will to bear on the will of his fellows.[1]

We have thus found in human society a demand of the most imperative sort for a person possessed of the preogative rule. We have found, also, that all candidates but one must certainly fail to meet that demand. Finally, we have found that this sole candidate possesses in a high degree the qualities which fit him for the indispensable and as yet unprovided-for function. Can we question longer the correctness of the proposition that to this sole candidate,—the individual man,—belongs the prerogative of rule? On utilitarian principles the proof is surely adequate. By the transcendentalist, asserting the infallibility and ascendency of reason, the proposition must certainly be accepted from its inherent rationality. Finally, this argument ought to satisfy that much larger class who start with the assumption that the order of things in which man finds himself is a rationally ordained order, that, consequently, its relations and adjustments are decisive proofs of the intentions of its Author, and that, as he is the embodiment of absolute reason and justice, the justice and legitimacy of his dispositions is not to be questioned. By every such theist it surely must be admitted that, in the conjunction of these three things; viz., society's evident and imperative need of a ruler, the absence of any other possible candidate than

[1] This argument from man's fitness is strengthened by the fact that, however iniquitous the conduct of particular states, and of almost every state at some time, human government has not been on the whole a failure. The condition of most men has evidently been much better with the rule they have had, than it conceivably could have been without any.

man taken individually, and the high degree of fitness which he can bring to the office, we have *a posteriori* proof of the strongest sort that, in the intent of the Author of the existing order, such authority was committed to the individual man. Thus the possession of such fitness, and especially its exclusive possession, is his adequate warrant. His capacity to rule is his commission to rule. He needs no other.

B. SECOND CLAUSE OF THE THESIS MAINTAINED.

If, now, it be admitted that we have established the first clause in the thesis, the second is little more than a corollary. Every man can formally claim to judge and punish any and every infraction of natural law, but the carrying out of such claim would inevitably develop conflicts among so many would-be executors. Whose claim is best? Clearly *his who possesses in the highest perfection those qualities upon which the original prerogative is based:* viz., reason, understanding, and strength of body. All persons are thus arranged in a sort of hierarchy, like the officers of an army; that is, any one is fully sovereign, until regularly superseded by one holding higher rank.

C. THIRD CLAUSE OF THE THESIS MAINTAINED.

In like manner, the superior fitness and, consequently, the superior prerogative of men acting in groups, as contrasted with the isolated individual, scarcely needs comment. Notably, association leads to differentiation of functions, thus setting apart for the varied tasks of government those who are by nature best fitted to serve in each particular capacity. Again, it is only by acting collectively that men can furnish the requisite physical force for the punishment of wrong-doers who are possessed of exceptional physical strength.

D. FOURTH CLAUSE OF THE THESIS MAINTAINED.

We have now but one more step to take. Just as the fitness of men acting in association is greater and, therefore, their prerogative is higher than that of isolated individuals; so it is easy to show that the fitness of the community, and, consequently, the prerogative of the community,—that association which embodies the totality of social relations,—is greater than the fitness and the prerogative of any lesser association. This proposition is too evident to require detailed defense. One need only reflect that the community is an association so extensive as to furnish an authority more nearly free from personal elements than any other association; that the sense of responsibility to a real public opinion makes the most reckless more thoughtful, lifts them out of their natural particularity, and enables them to realize in some degree the rationality which alone justifies their possession of authority; and, finally, that the community is an association which brings to the service of justice a physical force so overwhelming that the supremacy of justice is commonly assured without even a resort to that force. From these considerations the conclusion seems inevitable that, while the prerogative of men acting separately is high, and that of men acting in private association is higher, that of men acting through the community is highest of all.

CHAPTER III.

INDIRECT CONFIRMATION OF THE THEORY FROM ITS FITNESS TO EXPLAIN THE FACTS AND PROBLEMS OF POLITICAL HISTORY.

In the preceding chapter, I have tried to defend the thesis by setting forth the more immediate proofs of its truth. I will conclude with another sort of evidence, indirect but not, in my judgment, less valuable. It is that the doctrine here taught is the only one which is capable of justifying certain common facts of political history and of solving certain politico-ethical problems which continually present themselves in the life of states.

(1) First, consider the phenomenon of *private justice*, which has again and again appeared all along the course of history. In different parts of our own country it has manifested itself in the judicial processes of bands called regulators, or in even more spontaneous forms under the name of lynch law. In medieval times it prevailed far more extensively, —knight-errantry being its choicest fruit. Now, all admit that this sort of extemporaneous justice is decidedly inferior to the more guarded and impartial processes of an efficient and pure magistracy, of an executor acting in the name of the organized community, and, so, of course it is never justifiable where the latter mode of procedure is possible. But scarcely anyone will deny that under some conditions the resort to spontaneous judicial processes is necessary and justifiable. Yet, while this is commonly admitted with more or less frankness, it is not

common to offer any rational basis for the justification affirmed. To say that "necessity knows no law" is only to *cut* not to *untie* the knot. Nor is a rational justification of spontaneous private justice furnished by any of the theories above reviewed except that which attributes the ultimate prerogative to the strong as such. For, certainly, it could not be affirmed that such administration of justice depends on a direct commission from God. So, also, no theory which attributes the ultimate prerogative to a corporate entity such as society or the community or the state, and makes the particular prerogative of the concrete executor absolutely dependent on authorization by that corporate entity, would explain this case of private justice; for these self-constituted magistrates evidently have no such authorization. Exactly the same remark applies to every theory which involves any process of delegation.

But, while most theories as to the ethical basis of the state fail altogether to justify spontaneous judicial processes, the theory here advanced fits the case perfectly. It declares that the prerogative of restraining individual liberty in the interest of justice is absolutely universal. The measure of rationality and physical force which belong to each man are the credentials which empower him to make his utmost effort to secure the triumph of justice. This prerogative he is in duty bound to use in the way best fitted to accomplish the end. *Usually*, therefore, it is his duty to act with the community; since this is ordinarily the most efficient method. But, if this condition is not fulfilled, if for any cause the constituted means for enforcing justice prove powerless and society is almost in anarchy, it is now just as certainly his duty to disregard the claims of existing authorities and to do his utmost to secure the ends of the state by other means. If, under all the cir-

cumstances of the case, it seems evident that he can accomplish most by acting with some private association or even independently, it is his duty so to act. He should weigh well the consequences,—should consider carefully the balance of good and evil; but that is all. Once convinced, he need not hesitate to try for lack of commission; for, ethically, he has all the commission that anyone has.

(2) Closely analogous to private spontaneous justice is the case of the *hero*, the despotic chaos-destroyer, the autocratic system builder. The importance of this function has been recognized alike by poets and historians, by statesmen and philosophers; but, unless one asserts that the hero is divinely called to his mission like Gideon or Deborah, or unless one accepts, the doctrine that might makes right, modern political philosophy can say no more for him than that God makes the wrath of man to praise him. All theories which derive the authority of the state from some collective prerogative must affirm that while the assumption of authority by the founders of systems is unjustifiable at the beginning, it becomes rationally, ethically legitimate in time,—that such men have a right to rule, but not a right to *begin* to rule,—that the processes through which alone they can acquire legitimate authority are after all illegitimate. Thistles bring forth figs. We scarcely need add that the theory here propounded has no such difficulty. The despotic system-builder, as a man possessed of reason, moral sentiments, understanding, and physical force, has, like other men, the prerogative of using all his powers over men in general to advance the cause of justice. But, as his capacities are equal to the task of building systems, it is not only his right, it is as well his duty, to use those capacities to accom-

plish such results. His superior fitness thus creates his prerogative,—constitutes his commission. He needs no other.

(3) A third fact or problem of highest significance in political history is the *revolution*. Now, it is hardly necessary to remark that most current political theories, which exalt so highly the prerogatives of the community and disparage so greatly the rights of the individual, which look on all political prerogatives as necessarily derived from the state, or the community, or society, or some other abstract entity,—such theories make sad work with the problem of the revolution. It is, indeed, evident from the nature of the case that this must be so, that only some form of individualism can furnish the solution. For, consider what is involved in the phenomenon of a revolution. Here stands a political order with its concrete organs in the official class recognized by all as something public, impersonal, the incarnation of rational justice. Suddenly it is attacked by individual men acting, in form at least, only as private persons, with no warrant from any recognized authority. These new forces, apparently private, personal, individual, capricious, succeed in overthrowing the old order. They now set up a new public order, which they claim possesses the same impersonal, rational character as the old order which they have cast aside. Not only do they claim that it should be thus considered, as a matter of fact, it is, all in good time, so considered. That is, by some mysterious process the leopard has changed his spots; the Ethiopian his skin; out of the evil tree has come forth good fruit.

Here surely is a problem worth studying. How has it been solved? The contract theory, if it were on other grounds tenable, would meet this difficulty perfectly. By the consent of the men who make it, the state exists; when their consent

is withdrawn, it falls. Brought into being by powers which are essentially private and personal, it can never be anything more. As a real state it never exists, for it can never rise higher than its source. Thus, while the contract theory would have no difficulty justifying an attempt to overthrow a government, this would be due to the fact that it could never create any government to be overthrown. Again, the various theories which start with some purely private right such as that of redress or of self-preservation, if otherwise tenable, might easily explain the fact of revolution; for, according to these theories, the individual makes the state out of his own personal right, and so, of course, can unmake it. But with these doctrines we do not have to reckon, both because, starting with a purely private right, they never can attain to a true public authority, and because neither of them have any standing in political philosophy.

But, while certain generally rejected theories with reference to the basal political prerogative might be able to justify the revolution, there is no chance for the representative doctrines of current political philosophy. These doctrines, striving as they do to purge out all traces of individualism, insist on starting with a prerogative belonging to some mysterious non-individualistic entity, like society, or the people, or the state. This method of procedure has, of course, the great advantage of exalting the state in serene majesty above the caprice of the individual. It is the method of procedure natural to timid people who are too enlightened for the theologico-political mysticism of de Maistre or von Haller, and yet are appalled at the anarchic movings of the revolutionary spirit. But the very fact about these theories which makes them attractive to timid orthodoxy is just that which shows

their unfitness to solve the problem of the revolution. For it is plain that, logically interpreted, they leave absolutely no room for the revolution. It matters not what practical concessions any particular writer makes. If he really believes that the political prerogative belongs in no sense to individual men, but is always derived from some entity above and independent of individual men, then he must logically conclude that no individual man can, under any conditions whatever, be justified in assailing that prerogative. Nor is the case made any better by the simple declaration that "necessity knows no law." From the stand-point of philosophy this worn-out formula is simply a confession of failure. Such a taking-refuge in the asylum of the broken-down thinker may increase our respect for a man's common sense; but it is decisive against his claims to have discovered a self-consistent theory as to the genesis of the state. For, plainly, the crucial test of such a theory is just this case of the revolution. The revolution is just the period when the primordial political prerogative is evidently in demand. In ordinary times, all action seems to be within the state, from the state, by the state. But, in such epochs as we are now considering, *extra-legal*, *extra-constitutional*, *extra-state* forces must come in. The old order has been found wanting. It must be broken down. Here is an occasion demanding the exercise of *the ultimate prerogative*. Further, the work can be done only by individuals; for the very thing to be assailed is the recognized organ of society, or the community, or the general will. But, since, according to collectivist theories, the ultimate prerogative exists only in society, or the community, or the state, such empirically necessary action of individuals is ethically without justification. In a word, if the state of the contract theory is too weak, that of

thorough-going collectivism is as much too strong. Once set up, it can never justifiably be assailed.

But, while one set of theories builds too strong and the other too weak, the theory here offered avoids both these difficulties. It begins, indeed, like the first set of theories, with a prerogative of the individual, but with one which is already a general, universal prerogative belonging to man, not personally, privately, individually considered, but to man as a real, though imperfect, incarnation of the universal reason. Such a prerogative needs no transformation to become the political prerogative; it *is* the political prerogative already. This theory, therefore, has no difficulty in bringing into existence a perfect, complete, fully-equipped state. On the other hand, this doctrine escapes the opposite difficulty of building a state which, when once in existence, is too strong to be pulled down. It affirms that to each belongs the right, nay more, the duty, to exert all his powers to secure the establishment and maintenance of that political order which, under all the circumstances of any particular case is, the best possible. If, therefore, the existing order needs amendment, it is his right, it is his duty to do what he can toward bringing about that amendment. If he judge that the only possible amendment is through the awful path of a general overturn, and if he believes that such an overturn is at this time possible, he must do his utmost to bring about such an event. He needs no commission from society or the community, from any man or set of men, for, as a rational being, a true concrete universal, he has ample commission in himself. The attitude of other men, or of society, or of the state concerns him only so far as it determines, whether, in view of that attitude, a proposed course of action on his part will, or will not, tend to serve the interests of jus-

tice. If, by resisting the state, he will only increase the sum of wrong, he is bound to obey it. But, when he believes that his resistance will help to secure the triumph of right, he should treat the state like any other obstacle in the way of that glorious consummation. Our theory, therefore, justifies at once the honest rebel and the honest government which destroys him.[1] Yet this does not open wide the door to revolution. It merely insists on setting up only rational barriers against revolution. Man is endowed with understanding. It is a part of his duty to count the cost, to weigh well the chances of failure, to consider carefully the ratio between the probable good and the probable evil consequent on the proposed course of action, to realize that under the conditions of modern life, especially where the masses of men have some voice in government, it is almost certain that peaceful agitation will more surely and promptly secure the reign of justice. A people who are thus trained to use their common sense, to act with conscious reference to their rights, to their responsibilities, and to the probable consequences of their conduct, will in the long run be more likely to develop a law-abiding spirit, a capacity for self-government, a fitness to constitute the bulwarks of a really worthy political order, than a people who are kept in restraint by a sort of political priest-craft which sets up as the object of their worship, "Society" or the "Nation" or the "State."

(4) In the fourth place, I consider it to be one of the facts most strongly confirmatory of the truth of this theory that it is able to rationalize the prominent part which *force* has

[1] This explains the entirely different sentiments which people of every age entertain toward political criminals, on the one hand, and common offenders, on the other.

ever played in the history of mankind. In international disputes, this has always been and must ever be the final arbiter. In the internal politics of states, it has ever been a court of final appeal for the discontented and the oppressed. Either in the form of revolution or conquest, it has presided "at the birth of governments, at the birth of societies." Is this all anomalous? Is the major part of the record of the past without rational justification? Our theory returns an emphatic negative. Fitness comprises the decisive mark of ethically legitimate authority. But, the possession of adequate force is one most essential sort of fitness. Consequently, the possession of adequate force is one decisive mark of legitimate authority. When, therefore, the advocates of conflicting claims, unable otherwise to adjust their differences, appeal to force as the final arbiter, they are really deciding, in the only possible way, perhaps, the very important question—which of the two opinions possesses this mark of a valid title, viz., *superior strength*? Nor does any serious practical difficulty arise from the fact that force might be in alliance with caprice pure and simple. As a matter of fact, such an alliance never does, never can continue for any length of time. Political force is necessarily collective, *i. e.*, it can result only from a concurrence of independent wills. But, as long as man is a rational being, such concurrence can never be permanent under the leadership of a will wholly devoid of rationality. Doubtless the worse of two causes at times secures temporary ascendency, but experience and reason alike teach us that the cause which is on the whole worthiest, does and must in the long run triumph.

(5) Fifthly and finally, it is to be remarked in confirmation of our theory that it justifies the great *diversity in form* which has prevailed and does prevail among the governments

of the world. Monarchy, democracy, aristocracy, feudal patronage, all have dominated at different times, and in different places at the same time. Not only so, but also their rule has been beneficent; and it seems the extremest fanaticism to deny that in their time and place they have all possessed true legitimacy. It is needless to say, however, that several theories as to the basis of political authority are involved in just that sort of fanaticism. But this is not true of the doctrine here maintained. The ultimate basis of political prerogative being the possession of rational personality, all rational persons are legitimate candidates for sovereign power, and the true sovereign is the fittest of these candidates. Thus, therefore, it will be, at one time and unde one set of circumstances, the one who should rule; at another time and under another set of circumstances, the few who should rule; and so on to the end of the list.

LITERATURE OF THIS THESIS.[1]

ETHICS.

ARISTOTLE.—Nicomachian Ethics.
BAIN, ALEXANDER.—Moral Science.
BENTHAM.—Principles of Morals and Legislation.
BLACKIE, J. S.—Four Phases of Morals.
CALDERWOOD, H.—Handbook of Moral Philosophy.
COURTNEY, W. L.—Constructive Ethics.
DORNER, I. A.—Christian Ethics.
GREEN, T. H.—Prolegomena to Ethics.
HOPKINS, MARK.—Lectures on Moral Philosophy.
—Law of Love and Love as Law.
MARTINEAU, JAMES.—Types of Ethical Theory.
MILL, J. S.—Utilitarianism.
PORTER, NOAH.—Elements of Moral Science.
—Ethics of Kant.
SIDGWICK, H.—History of Ethics.
—Methods of Ethics.

PHILOSOPHY OF THE STATE AND OF LAW.

ADAMS, H. C.—Relation of the State to Industrial Action.
AMOS, SHELDON.—Science of Law.
—Science of Politics.
ARISTOTLE.—Politics.
AUSTIN, J.—Lectures on Jurisprudence.
BLUNTSCHLI, J. K.—The Theory of the State.
—Politik.
—Geschichte der Neueren Staatswissenschaft.
—Staatswoerterbuch.
BURGESS, J. W.—Political Science and Constitutional Law.

[1] Required by the University.

BURLAMAQUI, J. J.—Principles of Natural and Political Law.
CICERO.—De Republica.
—De Legibus.
CRANE, W. W.—Politics.
DEWEY, J.—Ethics of Democracy.
FILMER, SIR R.—Patriarcha.
FRANK.—Die Wolffische Strafrechtsphilosophie.
GREEN, T. H.—Philosophical Works, Vol. II.
GODWIN, W.—Political Justice.
HEGEL.—Philosophy of the State and of History. Morris.
HOBBES.—Leviathan.
HOLLAND, T. E.—Jurisprudence.
HUMBOLDT, K. W. VON.—The Sphere and Duties of Government.
HURLBUT, E. P.—Essays on Natural Rights.
JELLINEK.—Staatenverbindungen.
JEVONS, W. S.—The State in Relation to Labor.
KANT.—Philosophy of Law.
LALOR.—Cyclopedia of Political Science.
LASSON, A.—Rechtsphilosophie.
LEVI, L.—International Law.
LEWIS, G. C.—Remarks on the Use and Abuse of Political Terms.
LIEBER, F.—Civil Liberty and Self-Government.
—Political Science.
—Political Ethics.
LIGHTWOOD.—The Nature of Positive Law.
LOCKE.—Two Treatises on Government.
MAINE, SIR H.—Ancient Law.
MILL, J. S.—Liberty.
MORE, T.—Utopia.
MOREY.—Outlines of Roman Law.
MOSES.—(See Crane).
MULFORD, E.—The Nation.
PAINE, T.—Political Works.
PHILLIMORE, R. J.—Principles and Maxims of Jurisprudence.
PLATO.—Republic.
POLLOCK, F.—History of Political Science.

PUFFENDORF.—The Law of Nature and of Nations.
ROUSSEAU, J. J.—Contrat Social.
PULSZKY.—Theory of Law and Civil Society.
SPENCER, H.—Man vs. the State.
STAHL, F. J.—Philosophie des Rechts.
SUMNER, W. J.—What Social Classes Owe Each Other.
TRENDELENBURG.—Naturrecht.
WHEATON.—Elements of International Law.
WILSON, WOODROW.—The State.
WOOLSEY, T. W.—Political Science.
—International Law.

UNCLASSIFIED.

CARLYLE, T.—French Revolution.
DAVIES, J. L.—Social Questions.
DWIGHT, T.—Article on Harrington in Political Science Qu., 1887.
GUIZOT.—General History of Civilization.
—History of Representative Government.
HOOKER.—Ecclesiastical Polity.
HUME.—Philosophical Works, Vol. II.
HUXLEY.—Article on Natural Rights in the Nineteenth Century, Feb., 1890.
LESLIE, T. E. C.—Essays in Political and Moral Science.
MADISON, J.—Federalist, No. XIV.
MORLEY, J.—Rousseau.
—Miscellanies.
NEW YORK NATION.—March 1, 1881.
RITCHIE, D. G.—Article on Sovereignty in The Annals of The Am. Acad., Jan., 1891.
ROLLESTON.—Epictetus.
ROSCHER.—Political Economy.
SCHWEGLER.—History of Philosophy.
SETH.—Kant to Hegel.
ZELLER.—Pre-Socratic Philosophy.